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International Covenant on Civil and Political Rights

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Human Rights Committee
116th session

Summary record (partial)* of the 3233rd meeting
Held at the Palais Wilson, Geneva, on Monday, 7 March 2016, at 10 a.m.

Chair: Mr. Salvioli

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Organizational and other matters, including the adoption of the report of the pre-sessional Working Group on Individual Communications

* No summary record was prepared for the rest of the meeting.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 10.05 a.m.

Opening of the session

1. **Mr. Salama** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that 2016 would mark the fiftieth anniversary of the adoption of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. While growing inequalities and the withdrawal of existing rights in response to migration and terrorism were causes for major concern, the adoption of the Sustainable Development Goals gave room for hope that the Covenants would be more broadly implemented in the near future.

2. OHCHR had made the anniversary the subject of one of its main campaigns for 2016, which had begun with a photo exhibition launched on 16 December 2015. On 1 March 2016, a high-level panel discussion had been held in the Human Rights Council, along with a side event at which participants had stressed the need for the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to be more accessible to smaller, national NGOs that did not have experience in working with treaty bodies. The two Committees would hold a joint plenary meeting in June 2016, and the General Assembly would devote a plenary meeting during its seventy-first session to marking the anniversary. A special event would be held in New York on 16 December 2016, the actual date of the anniversary.

3. In addition, OHCHR planned to raise awareness of the Covenants among a wider audience, particularly among children and young people. A microsite had just been launched that offered promotional materials such as a human rights game for children, a colouring book and a quiz. The Office had prepared fact sheets on the Covenants, an easy-to-read version of each of them and a pocket-sized list of the rights that they established, as well as videos on the impact of the two Committees' work. The celebrations focused on both Covenants, as recent history had demonstrated that it was unhelpful to separate civil and political rights from economic, social and cultural rights. The fiftieth anniversary provided an occasion to strengthen the link between the two Covenants even further.

Adoption of the agenda (CCPR/C/116/1)

4. *The agenda was adopted.*

Organizational and other matters, including the adoption of the report of the pre-sessional Working Group on Individual Communications

5. **Mr. Vardzelashvili** said that the eight-member Working Group had met from 29 February to 4 March 2016 and had considered 31 cases. It was recommending that 2 cases should be declared admissible, that 8 cases should be declared inadmissible and that 21 cases should be considered on the merits.

The public part of the meeting was suspended at 10.20 a.m. and resumed at 12.30 p.m.

6. **The Chair** invited Mr. Shany to introduce his proposal for an expedited process for handling repetitive communications. He recalled that the proposal had been discussed at the Committee's previous sessions and said that he hoped that the Committee members would reach a consensus regarding the proposal at the current session. The rationale and the operational aspects of the proposed procedure were outlined in a document without a symbol that had been distributed informally in the meeting room. He had prepared unofficial French and Spanish versions of the proposal which were also available.

7. **Mr. Shany** said that his proposal was designed to address the growing backlog of pending communications. The idea was to institute an expedited review process for

communications that were very similar to ones that had been examined in the past. The Committee currently spent a great deal of time aligning the texts of Views adopted on new communications with the Views adopted on older communications dealing with the same matters. One of the reasons for that was that different but similar communications were examined by different rapporteurs under the current system.

8. He was proposing a two-year pilot project. Two special rapporteurs would be appointed to handle repetitive communications (that was, cases that dealt with facts and raised legal questions very similar to ones considered by the Committee in the past). The Special Rapporteur on new communications and interim measures would refer cases which he deemed to be repetitive to those rapporteurs, who would then submit a folder containing draft Views to the Working Group on Communications. Every member of the Committee would have the right to veto the decision and return the communication to the ordinary track. If no member of the Working Group wished to remove a communication from the expedited track, the folder would be submitted to the plenary. The new procedure would ensure greater consistency and would enable the Committee to increase its productivity and serve more victims of human rights violations. It was important for the Committee to demonstrate that it was making every effort to increase its productivity, without jeopardizing quality. The proposal contained sufficient safeguards to ensure that the quality of the Committee's work would actually be enhanced.

9. **Mr. Fathalla** said that he endorsed the proposal but would appreciate clarification on one point. According to Mr. Shany, any Committee member had the right to veto a decision to assign a communication to the expedited track. However, according to paragraph 5 of the proposal, the communication would not be returned to the ordinary track, but would be discussed by the Committee. He also noted that it was being proposed that no individual or dissenting opinions would be appended to Views on repetitive communications placed on the expedited track. Would a dissenting opinion which had been expressed by a current member of the Committee in a similar case in the past be automatically reflected or not?

10. **Mr. de Frouville** said that he wished to thank the Chair for translating the proposal into French and Spanish and to point out that such working documents should be made available by the secretariat in the main working languages of the United Nations. He agreed with the proposal in general, but wished to discuss a few of the details relating to its implementation. He welcomed the idea of a two-year pilot procedure as it would enable the Committee to refine its methodology.

11. He would like to know whether, prior to the meeting of the Working Group, the Committee members could be notified of cases identified by the co-rapporteurs as repetitive. That would enable the Committee members to raise any questions or concerns that they might have and would make it possible to avoid unnecessary discussions in the Working Group and the Committee. He also wondered whether communications regarding which there were dissenting opinions should not automatically be excluded from the expedited procedure. When dealing with a communication, the aim was to reach consensus and, in the event of dissenting opinions, an additional discussion might be necessary.

12. **Mr. Ben Achour** said that, in his view, the rules of procedure would need to be reviewed in order for the expedited procedure to be formally adopted. Before undertaking such a review, however, perhaps the Committee should test out the proposed procedure at its following sessions in order to see what the results would be. He welcomed the provision made in the proposal for the removal of a communication from the expedited track. Lastly, he wished to know who would be responsible for appointing the two co-rapporteurs.

13. **Mr. Rodríguez-Rescia** said that he would like to know what would happen if the author of a communication or a State party opposed the use of the procedure because, given

specific concerns related to the case in question, they wanted that case to be examined in a differentiated manner. Actions could be joined if a series of specific conditions had been met, but if an author or a State party claimed that those requirements had not been fulfilled, the Committee would have to know how to respond. Nonetheless, he agreed with the proposal in general. He also noted, however, that, in practice, if there were no objections, a case could be resolved without the involvement of the Working Group or the plenary. Thought should also be devoted to the difficulties involved in requesting that a particular case should be analysed by the Working Group if Committee members received 30 or 40 cases just a few days before the Working Group met.

14. **Ms. Waterval** said that she endorsed the proposal and suggested that the Committee should start testing the procedure at its next session in order to see what challenges might arise.

15. **Mr. Vardzelashvili** said that, if the Committee was divided on a particular case, the case should be returned to the ordinary track. However, in other cases, members who wished for their opinion to be reflected in the Committee's Views on a repetitive case should be given that option.

16. **Mr. Bouzid** said that he entirely agreed with the observations made by Mr. Ben Achour and Mr. Rodríguez-Rescia. He would suggest that a voluntary procedure should be used to appoint the two co-rapporteurs and that the pilot project should run for one year instead of two.

17. **Mr. Iwasawa** said that the resources of the secretariat would need to be strengthened in order for the Committee to benefit from the expedited process.

18. **Mr. Seetulsingh** said that he wondered how the decision as to whether a case was repetitive or not would be reached. Would cases be considered repetitive if the conclusions reached by the Committee were the same or should the merits of each case be considered separately? He was willing to undertake the pilot project but the Committee should not make any commitments with regard to its end result.

19. **Mr. Ben Achour** said that he wondered if there was a way of soliciting the States parties' opinions on the proposal. He was concerned that, since the Committee was introducing a procedure not provided for under the Optional Protocol, some States parties might consider that the expedited process ran counter to its provisions.

20. **The Chair** said that decisions regarding the Committee's methods of work fell within its own area of authority.

21. **Mr. Fathalla** said that the rules of procedure should not be adapted to accommodate a pilot project.

22. **The Chair** said that the pilot project could be conducted first and, if necessary, the rules of procedure could be amended afterwards.

23. **Mr. Shany** said that he thought that it was a good idea to have the project run for one year instead of two. As the Chair had pointed out, the rules of procedure did not need to be amended prior to the project but could be modified later on, if necessary. The Bureau could appoint the two co-rapporteurs, on a voluntary basis, and their appointment would then be submitted to the Committee for approval. In his opinion, at least during the initial stage of the pilot project, the Committee should not be dealing with dissenting views. If there were such views, the case should be removed from the expedited track. Only cases on which the Committee members had reached full agreement should be considered under the extradited procedure. A revised procedure that might allow for dissenting opinions could be developed at a later stage.

24. With regard to the clarification sought by Mr. Fathalla, once a case had been brought before the Working Group, if there were no comments, it had, in essence been adopted by the Working Group by default prior to its submission to the plenary. He doubted that States parties would object to the procedure. What States parties disliked was inconsistency in the way in which cases were resolved by the Committee, and the expedited procedure would help make its decisions more consistent. As for the concerns expressed by Mr. Seetulsingh, the expedited procedure would apply only to cases in which the facts and legal issues were very similar. With respect to one of the concerns expressed by Mr. Rodríguez-Rescia, if a case were withdrawn from the Working Group and there was not enough time to present it, it could be considered at the following session.

25. **Mr. Ben Achour** said that some States parties might well object to the expedited procedure and claim that their case had not been examined properly.

26. **Sir Nigel Rodley** said that the Committee had fast-track procedures for dealing with decisions regarding the admissibility of various types of communications. There was no reason why it should not introduce the expedited procedure for repetitive communications. If it were a question of dealing with a standard communication in which the issues would lead the Committee to conclude that a violation had taken place, then of course the State party would have to be able to respond to the allegations. The aim of the procedure was not to short-circuit inputs from States parties but to make the Committee's discussions more efficient, which was an internal matter.

27. **The Chair** said that he took it that the Committee members wished to approve the proposal to introduce an expedited process for repetitive communications as a pilot project for a period of one year.

28. *It was so decided.*

The meeting rose at 1.05 p.m.

United Nations CCPR/C/SR.3234

International Covenant on Civil and Political Rights

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116th session

Summary record of the 3234th meeting
Held at the Palais Wilson, Geneva, on Monday, 7 March 2016, at 3 p.m.

Chair: Mr. Salvioli

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Consideration of reports submitted by States parties under article 40 of the Covenant

Initial report of South Africa

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Initial report of South Africa (CCPR/C/ZAF/1; CCPR/C/ZAF/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*

2. **Mr. Jefferey** (South Africa), introducing the initial report of South Africa, said that since the advent of democracy in 1994 the Government had made strides in pushing back the main pillars of the apartheid legacy of inequality, unemployment and poverty. The country had demonstrated its commitment to peace, security and justice, and measures had been adopted to heal past divisions and establish a society based on democratic values and fundamental human rights. Racism persisted but South Africa was seeking to combat it and to promote reconciliation through, for example, the Truth and Reconciliation Commission and the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Government was seeking to transform society and to build a new nation in line with values enshrined in the Constitution such as human rights and freedoms, equality, non-discrimination and the rule of law. The priority was to provide primary health care, education and social assistance to the population, and to deliver comprehensive social security including housing, water, sanitation and electricity to previously disadvantaged groups.

3. The right to equality and non-discrimination was entrenched in the Constitution and a number of laws had already been passed to give effect to that provision. A bill addressing hate crimes and hate speech was due to be presented for consideration by Parliament in 2016 and approval had recently been given to the White Paper on the Rights of Persons with Disabilities. The Department of Justice and Constitutional Development had set up a national task team to counter discrimination and violence against people based on their actual or perceived sexual orientation or gender identity, and South Africa had recently hosted a regional seminar aimed at finding practical solutions to that issue. Equality and non-discrimination were also the basis of the Government's approach to indigenous groups. The Traditional and Khoi-San Leadership Bill aimed to recognize Khoi-San communities and leaders, and provided for the establishment of the Pan South African Language Board to promote the use of, among others, the Khoi, Nama and San languages.

4. Gender equality was enshrined in the Constitution. South Africa was leading the continent in that regard and could boast an unprecedented body of laws and institutional mechanisms for promoting and empowering women. The blueprint for gender mainstreaming was the National Gender Policy Framework and a Ministry for Women had been set up in the Presidency. Women accounted for 41 per cent of parliamentarians, around 60 per cent of chief magistrates and 45 per cent of other magistrates.

5. Violence against women and children was a subject of paramount importance and had been the subject of extensive legislative reforms. Sexual offences courts had been reinstated and the police had established the Family Violence, Child Protection and Sexual Offences Units. The Department of Social Development had set up a number of shelters and centres throughout the country to empower and provide support for victims of gender-based violence, and there were 55 Thuthuzela Care Centres, which had been recognized by the United Nations as a best practice model in the response to gender violence. A call centre for victims of gender-based violence handled around 1,500 calls a day and had also won a number of international awards. Anti-violence campaigns sought to mobilize men and boys, and make them part of the solution in eradicating violence against women.

6. There had been a constant improvement in the management of persons deprived of liberty. The number of remand prisoners had fallen from 55,649 in 2007 to 41,224 in 2015

while incarceration rates had dropped from 403 per 100,000 population in 2004 to 290 in 2014. The Department of Correctional Services was committed to caring for female inmates in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders and 17 mother and baby units had been set up inside prisons. With the introduction of the 2008 Child Justice Act, measures were being taken to expedite cases involving children in conflict with the law and the number of children in correctional facilities had dropped dramatically. Complaints received from inmates were processed electronically and investigated by independent correctional centre visitors; the data collected was made available to stakeholders.

7. South Africa accepted the criticism that the police had sometimes reacted outside the law with regard to protests, but suspected offenders were dealt with through the legal system and internal disciplinary procedures. A panel of international experts had been established to consider the recommendations of the Marikana Commission of Inquiry and a task team had been created to look into public order policing. The Independent Police Investigative Directorate acted as a monitoring body and investigated claims of police misconduct. The 2013 Prevention and Combating of Torture of Persons Act provided for the prosecution and punishment of persons responsible for acts of torture.

8. South Africa was a major destination for asylum seekers, migrants and persons looking for better economic and social opportunities. Under law, undocumented migrants could be detained for a period of 30 days with a possible court-mandated extension of 90 days. Those awaiting deportation to their countries of origin were held at the Lindela Repatriation Centre which was regularly monitored by the South African Human Rights Commission and the International Committee of the Red Cross. The Government had strongly condemned recent attacks against migrants, and law enforcement agencies had moved to contain the violence and stop it spreading to other parts of the country. Work to restore peace and order was being coordinated at the highest level. In April 2015 President Zuma had convened the first of a series of meetings with stakeholders to discuss migration and integration policies in South Africa. Those issues were also being examined by three separate interministerial committees.

9. **Mr. Shany** said that he recognized the independence and effectiveness of the South African Human Rights Commission. However, he was concerned that, while its budget was sufficient for its ordinary operations, it lacked emergency funding for response to unplanned events such as the recent xenophobic violence. He asked the delegation to comment on disquieting information the Committee had received that certain watchdog bodies were not fully independent of the institutions they were supposed to be monitoring. Specifically, he wondered whether the State party was reviewing the adequacy of its protection mechanisms.

10. In view of the fact that only two communications from South Africa had been submitted under the Optional Protocol to the Covenant, he wondered whether there was sufficient awareness about the Protocol and the Committee's work in that regard. He asked what measures had been taken in the *Bradley McCallum v. South Africa* case, including details about any disciplinary measures and appeal proceedings. In the case of the President of Sudan, the delegation should explain why a decision by a national court to implement an international obligation had not been heeded.

11. In light of information suggesting that the handling of violence against foreigners had not improved, he wished to know how racism and xenophobia among law enforcement officials was being monitored and whether recommendations on the role of the police issued by the Human Rights Commission had been implemented. Recent court rulings criticizing the practice of selective shop closure seemed to confirm claims that the police were hostile to migrants. He asked whether it was true that as many as 900 foreigners had died in xenophobic attacks throughout the country over the previous eight years and that

very few convictions had been obtained. If so, he wished to know what steps were being taken to address that problem. He commended South Africa for the integration strategy it was currently drafting. It was an important step which would help to reduce tension between migrants and locals. He wished to know whether the strategy also addressed the situation of internally displaced persons who had lost their homes in xenophobic attacks.

12. He praised the State party for its hate crimes and hate speech bill and for the broad consultations undertaken by its Government. However, he was concerned about the time it was taking to develop a comprehensive policy on such an urgent matter. It would be useful to learn whether the bill would cover hate speech on social media and in the workplace. Although the State party had taken commendable steps, it appeared that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons still suffered discrimination when accessing State health facilities or seeking redress for crimes. He wished to know whether any specific training concerning the special needs of LGBTI persons was offered to health workers and law enforcement officials. He asked the delegation to respond to concerns about the implementation of the 2003 Alteration of Sex Description and Sex Status Act and about the use of non-consensual treatment affecting intersex persons.

13. **Ms. Cleveland** said that she would welcome further information regarding the amount of financial resources allocated to the national five-year plan to combat HIV/AIDS. She also wished to know how many persons had received treatment under the plan and what efforts had been made at national level to combat the stigma and discrimination experienced by persons living with the disease. Similarly, it would be interesting to learn what steps had been taken to guarantee equal access to HIV/AIDS treatment for vulnerable groups, such as women and persons living in remote and rural areas, and to ensure that disability grants were awarded fairly and consistently.

14. As to the deaths of 44 miners in Marikana, she asked what measures had been taken to effectively investigate, prosecute and punish the perpetrators. Concrete data on the number of prosecutions and convictions handed down in those cases would be appreciated. She also wished to know whether the State party intended to amend the South African Police Service Act and issue updated policing guidelines on appropriate use of force so as to prevent the reoccurrence of such events in future. In that connection, she requested further information on the composition, mandate and findings of the Panel of International Experts appointed to consider the recommendations of the Farlam Commission of Inquiry into the miners' deaths. What steps had been taken to investigate the Lonmin mining company's involvement in the Marikana incident?

15. Regarding cases of torture, she asked whether specific provisions guaranteeing access to legal aid and the right to redress for victims of torture had been incorporated into the Prevention and Combating of Torture of Persons Act. Similarly, she wished to know whether police officers responsible for investigating cases of torture had received the necessary training to deal with victims of torture and ill-treatment sensitively and effectively.

16. **Mr. Bouzid** said that he would like detailed information on the number of cases of *ukuthwala* (forced marriages of women and girls to older men through abduction) reported across the country, including the number of perpetrators brought to justice. He also wished to know whether the State party intended to prohibit polygamy and the killing of "witches". In addition, he asked whether concrete steps had been taken to amend the Children's Act so as to prohibit virginity tests for girls and to implement effective awareness-raising campaigns to combat traditional and family pressures on girls and women in favour of that practice. Information on progress made towards the prohibition of corporal punishment of children in all settings, including in the home and at school, would also be welcome.

17. Lastly, he requested detailed statistics on the number of persons residing in centres for victims of trafficking and their average length of stay. The delegation should indicate what measures had been taken to prohibit, prosecute and punish labour brokers involved in the exploitation of migrant workers and trafficking victims.

18. **Mr. Muhumuza** asked what efforts had been made to implement legislation aimed at preventing and punishing sexual and gender-based violence and to encourage victims to report such acts. He said he also wished to know whether training had been provided to law enforcement officials and health service personnel to ensure that they were able to respond effectively to all forms of violence against women. Similarly, he asked what steps had been taken to ensure that victims of domestic violence, particularly women with disabilities and migrant women, had access to redress, protection and rehabilitation and that perpetrators were prosecuted and duly punished.

19. **Mr. Iwasawa** asked what measures had been taken to uphold the provisions of the Alteration of Sex Description and Sex Status Act. He also wished to know why 11 out 45 cases before the National Task Team on Gender and Sexual Orientation-based Violence Perpetrated against LGBTI Persons had been withdrawn. Information on policies adopted to protect the rights of lesbian, gay, bisexual, transgender and intersex children and the current status of the policy framework on combating hate crimes, hate speech and unfair discrimination would also be helpful.

20. **Mr. Seetulsingh** said that he would like a detailed explanation of the suspension from office of the Head of the Independent Police Investigation Directorate in March 2015. It would also be interesting to learn what measures had been taken to improve the transparency of the investigations undertaken by the Independent Police Investigation Directorate into human rights violations perpetrated by the police and to increase the conviction rates for police officers found guilty of excessive use of force or violence. In that connection, he requested further information on the outcome of the trial involving 27 members of the Cato Manor Police Organized Crime Unit.

21. Detailed information on the composition, mandate and budget of the Judicial Inspectorate of Prisons would also be welcome, including whether the State party intended to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to appoint the Judicial Inspectorate as the national preventive mechanism. Lastly, he wished to know what measures had been taken to ensure that private prisons complied with domestic legislation and international standards on prisoner welfare and management in the same manner as State-run prisons. Did the State party intend to increase the overall amount of funding provided to prisons to improve general detention standards?

22. **Mr. de Frouville**, referring to the Choice on Termination of Pregnancy Act, which had marked a major step forward for women's rights and could serve as an example of best practice for other States, asked the delegation to comment on the impact of that legislation in terms of a decrease in the maternal mortality rate and recourse to unsafe abortions.

The meeting was suspended at 4.25 p.m. and resumed at 4.50 p.m.

23. **Mr. Jefferey** (South Africa) said that chapter 9 of the Constitution provided for a specific category of institutions to support constitutional democracy, including the South African Human Rights Commission, the Commission on Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Public Protector. Those institutions were accountable only to the National Assembly and they approached Treasury directly for funding, which was transferred to them through the relevant government department. For example, the allocation for the Human Rights Commission and the Public Protector was ring-fenced in the budget of the Department of Justice. The National Assembly was currently reviewing

institutional arrangements and considering whether some of the institutions might be merged. Concerns had been raised, for example, about the Public Protector investigating complaints by public servants that could be referred to the Public Service Commission.

24. The problem in the McCallum case was that he had brought his case before the Committee before having exhausted domestic remedies in South Africa. He had maintained that he could not bring his claim before the domestic courts because it had prescribed, but South African legislation allowed for condonation if a claim had prescribed. In fact, subsequent to Mr. McCallum bringing the case before the Committee, he and 230 other prisoners had applied for condonation, which had been approved, and they had then proceeded with a civil case for damages. The number of plaintiffs in that case had later been reduced to two — Mr. Siko and Mr. Mbena — with the others reserving their right to pursue their case. The court had been scathing of the evidence and had dismissed the case; the Committee would be provided with a copy of the judgement. An appeal of that decision was under way, and, if successful, the remaining 229 claimants might wish to pursue their case.

25. The South African Government took very seriously the case of President Al-Bashir of the Sudan. It had been its understanding that the Heads of State of all members of the African Union could attend the summit in South Africa and that legislation on immunities would override the domestication of the Rome Statute of the International Criminal Court. Leave to appeal had been refused by the North Gauteng High Court on the basis that it was moot now that President Al-Bashir had left the country. Nonetheless, the matter had been brought before the Supreme Court of Appeal, where it was awaiting judgement.

26. With regard to hate crimes, the Government's original intention had been to develop a policy, but in the end it had opted to draft legislation in order to expedite matters. Hate crimes were invariably already crimes under existing legislation. For example, rape was already a very serious crime, regardless of whether it was committed against a lesbian woman for homophobic reasons. A hate crimes working group of civil society representatives, including LGBTI and Jewish organizations, had been consulted on the draft bill. Following the incidents on social media, it had been decided to include hate speech in the bill, while taking into account the constitutional provisions on freedom of expression. Such freedom must not constitute advocacy of hatred based on race, ethnicity, gender or religion and must not constitute incitement to cause harm.

27. Complaints from the LGBTI community concerning the conduct of the Department of Home Affairs in the application of the Alteration of Sex Description and Sex Status Act and the Civil Union Act, for example, were often overly broad; specific details should be provided. The National Task Team on Lesbian, Gay, Bisexual, Transgender and Intersex People was co-chaired by the Director-General of the Department of Justice and a representative of civil society and membership was open to all civil society organizations. Members of civil society were urged to raise any problems they had encountered in their dealings with government on LGBTI issues in that forum. The police was currently reviewing 11 cases of crimes against LGBTI people in order to assess whether there was sufficient evidence to initiate legal proceedings.

28. As the Prevention and Combating of Trafficking in Persons Act had only come into effect in August 2015, the information on its implementation was limited. Trafficking for sexual purposes and trafficking of children had already been classified as crimes, but the Act had widened the scope of the crime of trafficking to include labour exploitation, provided for support mechanisms for victims and specifically criminalized the practice of forced marriage. The conviction of a person claiming to have followed the traditional practice of *ukuthwala* had taken place prior to the entry into force of the Act.

29. **Ms. Rotmann** (South Africa), referring to the Committee's views in the McCallum case, said that, pursuant to a legal opinion that the institution of disciplinary proceedings against the officers involved in the incidents some five or six years after the alleged transgressions would be unconstitutional and constitute unfair labour practice, the matter had not been pursued. The inspecting judge who headed the Judicial Inspectorate was a retired or active judge of the High Court who was appointed by the President and continued to receive the salary and privileges attached to the office of a judge. The budget for that office came under the Department of Correctional Services, but was allocated directly without interference from the Department.

30. There were two private correctional facilities in South Africa; although operation of the facilities had been outsourced, the Government's constitutional obligations in relation to oversight had not, and were the same as for all other facilities. Visits were conducted by the correctional services inspectorate, the South African Human Rights Commission, the parliamentary bodies and judges. There were permanent controllers in both facilities to monitor implementation of the contract, ensuring that all legislative parameters were respected. The construction of additional facilities was being considered to ease overcrowding in prisons but the Government was aware that other interventions were also required. Efforts were being made to identify more appropriate placements for sentenced prisoners serving terms of less than 2 years. A good deal of success had been achieved with remand detainees, and the size of the remand population in one of the most overcrowded facilities in Johannesburg had been reduced from 8,000 to 4,000. It was now necessary to replicate that success in other parts of the country.

31. **Mr. Dangor** (South Africa) said that in the first ten years following the passing of the Choice on Termination of Pregnancy Act, mortality and morbidity linked to unsafe abortions had decreased by 90 per cent, although there were some unsubstantiated reports that the figures had again started to rise in the past five years. Key challenges included ensuring that all designated abortion facilities were fully operational and reducing the stigma that prevented some young women from accessing public facilities. There were insufficient data on the numbers of women accessing unsafe abortions, but statistics were kept on the number of septic miscarriages. An adolescent sexual and reproductive health strategy had been approved with the aim of ensuring that all young people, including from the LGBTI community, were catered for and received comprehensive sexual education. Virginity testing was prohibited by law for children and women over 18 must provide written informed consent. Efforts were being made to change societal values in that area. The issue of discretion in the allocation of disability grants had become less of a concern following the massive roll-out of the antiretroviral programme for persons living with HIV. However, a harmonized assessment tool for disability grants was to be piloted so that all doctors would be using the same template and thus avoid using their discretion.

32. **Mr. Nwaila** (South Africa) said that the practice of *ukuthwala* was recognized under customary law, provided that it was carried out in accordance with the bill of rights and the Constitution. A distinction should be made between abduction and *ukuthwala*. In the latter practice, an adult couple who wished to marry but who faced obstacles, for example if the man did not have enough cattle, would agree that the woman should be taken by the man to his parents' home. They would then inform the woman's parents of her whereabouts and would keep her with them until the marriage rights had been finalized. Some individuals were abusing the custom by abducting minors, which was not part of the tradition of *ukuthwala*.

33. Polygamy had long been practised by local tribes, though it had not been officially recognized in South Africa until the democratic era. Polygamy was allowed under certain conditions, one of which was that the husband's current wives must agree to him taking a new wife. Women were granted property rights on an equal footing with men, which had

not previously been the case. People living in rural communities where the practice was followed welcomed its legal recognition.

34. Unfounded accusations of witchcraft and subsequent persecution had been a significant problem in the early 1990s. In recent years it had become less common, as the Commission for Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the South African Law Reform Commission were both working to raise awareness and address the problem.

35. **Mr. McKay** (South Africa) said that officials in the Ministry of Home Affairs received continuous training to ensure that the legal provisions on the alteration of the sexual identity of transgender and intersex persons were uniformly applied.

36. **Mr. Dangor** (South Africa) said that corporal punishment was prohibited in schools and that the proposed revision to the Children's Act included provisions that would also prohibit the practice in the home.

37. **Ms. Shabangu** (South Africa) said that, once the Farlam Commission of Inquiry had concluded its work after a three-year process, the President had set up a task force including international experts with a view to improving professionalism within the police force. The current police commissioner had been suspended, and an inquiry would be conducted into her conduct. Investigations into the conduct of various police officers involved in the Marikana incident were being conducted by the Independent Police Investigation Directorate, and some cases had been referred to the prosecuting authority.

38. Labour brokers were no longer allowed to hire and fire workers at whim. Rather, they must comply with the established conditions of employment, including the minimum wage. Pursuant to the Labour Relations Act, no one, including labour brokers, was allowed to contract workers for more than 12 months without registering them as full-time employees.

39. **Mr. Jefferey** (South Africa) said that the charges against the police officers accused in the Cato Manor case had been reinstated. The main trade union in the country was strongly opposed to labour brokering, but it was a complex issue that could not be addressed simply by banning the practice.

40. The Department of Basic Education was working to promote tolerance and protection for the rights of LGBTI young people in schools by using mechanisms that encouraged debate. For example, the topic set for the moot court competition held in 2015 had involved a lesbian student at a Catholic school who wanted to take her same-sex partner to a school dance.

41. The Torture Act criminalized torture and established civil remedies that applied in cases of torture. Given that the Government was regularly sued by individuals and forced to pay damages, those remedies appeared to be working effectively, and the Government saw no need to change them. The State intended to adopt the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but it wished to develop its national preventive mechanism before doing so. Discussions were under way with the Judicial Inspectorate of Prisons and the Independent Police Investigation Directorate on their inclusion in that mechanism, but other bodies would be needed to fill the gaps. It had been proposed that the South African Human Rights Commission might coordinate the various bodies that would make up the mechanism.

42. The large waves of migration arriving from Asian and especially other African countries posed a major challenge. His delegation was surprised by the claim that 900 foreigners had been killed in violent attacks. His Government's policy was to integrate migrants, including refugees, into society. Poverty and competition in the labour market between South Africans and migrants with little to no formal education was often at the

root of the tensions between citizens and migrants. Citing two high-profile cases of murdered Mozambican migrants, he noted that in both cases the perpetrators had been convicted. The head of the Independent Police Investigative Directorate had been suspended based on claims that he had altered a report on the illegal rendition of a person to Zimbabwe who had subsequently been killed.

43. **Mr. Iwasawa** noted that, according to the Constitution, a self-executing provision of an agreement that had been approved by Parliament was considered to be law in South Africa unless it was inconsistent with the Constitution or an act of Parliament. That seemed to contradict paragraph 95 of the State party's core document (HRI/CORE/ZAF/2014), which stated that provisions of an international treaty could not be invoked before or directly enforced by the courts and that they must first be translated into South African laws or administrative regulations. He asked the delegation to comment on that apparent contradiction and to clarify the status of the Covenant in the national legal order.

44. **Ms. Waterval** asked whether corporal punishment was prohibited in childcare institutions. She said that the delegation should also clarify the legal situation regarding polygamous marriage and equality for women in matters of inheritance.

45. **Ms. Cleveland** requested further information on the number and current status of cases referred for possible criminal investigation in relation to the Marikana incident. She said that the delegation should explain the wide disparity between the number of reported cases of sexual offences and the much lower number of convictions. She wished to know about the obstacles preventing victims of sexual and gender-based violence from obtaining free legal aid. Lastly, it would be interesting to learn whether the State party planned to collect disaggregated data on different types of gender-based violence.

46. **Mr. Shany** pointed out that, in the McCallum case, the State party had not appeared before the Committee and had not submitted any claim regarding the exhaustion of domestic remedies. He said that the court judgement cited by the delegation was not a class action and concerned only 2 of the 231 individuals who had made allegations. He therefore wished to know the current status of the other 229 cases. It was unclear why the State had waited five years to begin the disciplinary proceedings. Given the seriousness of the Committee's findings, he questioned whether it was reasonable to categorize the initiation of disciplinary proceedings as an unfair labour practice.

47. He drew the delegation's attention to paragraph 24 of the Committee's general comment No. 28, which stated that polygamy was inconsistent with the principle of equality of treatment with regard to the right to marry. He therefore wished to know whether the State party was working to make polygamy less acceptable in South African society.

48. **Mr. Politi** requested clarification regarding the exact subject matter and stage of proceedings in the case before the Supreme Court of Appeal concerning the order to arrest President Al-Bashir. The jurisprudence of the International Criminal Court left no room for doubt regarding the immunity of Heads of State and the obligation of South Africa to arrest President Al-Bashir when he was in the country.

49. **Mr. Bouzid** said that children who underwent traditional rites of passage into adulthood in certain communities were deprived of food and exposed to life-threatening conditions. Indeed, a number of children had died as a result of those initiation rites. He therefore wished to know whether the Government intended to intervene and exert some control over the situation.

The meeting rose at 6 p.m.

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Summary record of the 3235th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 March 2016, at 10 a.m.

Chair: Mr. Salvioli

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Initial report of South Africa (continued) (CCPR/C/ZAF/1; CCPR/C/ZAF/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*

2. **The Chair** invited the delegation to continue its replies to questions raised by the Committee at the previous meeting.

3. **Mr. Jefferey** (South Africa) said that, under section 231 (2) of the Constitution, the Covenant was binding on South Africa, inasmuch as it had been approved by resolution in both the National Assembly and the National Council of Provinces. As to the question of whether there was a need to enact the Covenant into law under section 231 (4), the Government would consider the issue and, if necessary, take appropriate legislative action.

4. Under the Alteration of Sex Description and Sex Status Act, a person whose application for the alteration of the sex description on his or her birth register had been refused could appeal first to the Minister of Home Affairs and subsequently to the magistrate of the district in which he or she resided.

5. With regard to the question concerning the President of the Sudan, the Government had taken the matter to the Supreme Court of Appeal and was currently awaiting the Court's decision. He pointed out that President Al-Bashir had travelled to South Africa not to visit the country but to attend a summit of Heads of State of the African Union.

6. While his Government respected the observations of the Committee on polygamy that were set out in its general comment No. 28 and that served as guidelines to States parties on the interpretation of the Covenant in that regard, it had no plans to abolish the practice, which was recognized by the Constitution as marriage and a form of a family unit. The issue of polygamy had been considered by the Constitutional Court, which had ruled that, in polygynous marriages under customary law, the first wife's consent was required before a second marriage could be entered into.

7. The Government acknowledged that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons experienced discrimination when trying to access services to which they were legally entitled. Accordingly, the Department of Justice and the National Task Team on Gender and Sexual Orientation-based Violence Perpetrated against LGBTI Persons had developed a basic guide for service providers in various areas of government, including the criminal justice system, in order to help them better understand the issues involved. No statistics on hate crimes as such were currently available, since the bill to create a specific offence of hate crime had not yet been passed. The Government had received the Human Rights Commission report on safety and security challenges in farming communities and was considering ways to deal with the issues raised.

8. There were currently 6.59 million people living with HIV in South Africa. A total of 3.4 million persons were receiving antiretroviral therapy, and transmission in pregnancy had been reduced by almost 90 per cent. The impact of that treatment and of prevention of mother-to-child transmission services was reflected in declines in mortality and an increase in life expectancy from 53 years in 2006 to 61 years in 2012. Child and infant mortality had declined by 25 per cent in the period from 2009 to 2012. The South Africa National AIDS Council had conducted various publicity campaigns designed, among other things, to raise awareness of World AIDS Day and to reduce the stigma attached to HIV/AIDS. The Council had signed a memorandum of understanding with Legal Aid South Africa with a

view to promoting access to justice for vulnerable groups, especially persons living with HIV/AIDS and tuberculosis. Furthermore, the AIDS Consortium had been appointed to develop a pilot stigma reduction programme in the Eastern Cape, which would subsequently be rolled out across the country.

9. Regarding the case of *Bradley McCallum v. South Africa*, his Government acknowledged its failure to submit a response when the matter had been raised before the Committee. As to the related civil matter in South Africa, the 231 applicants who had brought the case had taken a decision to reduce their number first to 4 and then to 2. Mr. McCallum, who was not one of the two remaining applicants, was entitled to launch proceedings on his own behalf. As to civil society reports concerning allegations of further assaults similar to those in the case under discussion, the Government was aware of a recent incident involving alleged excessive use of force at the Kgosi Mampuru correctional facility near Pretoria. The officials in that case had been suspended, and an investigation was under way. His delegation would welcome any information the Committee might have about other similar incidents.

10. Corporal punishment was currently banned in State institutions. A legislative amendment was planned to extend the ban to private institutions and the domestic setting.

11. **Mr. Nwaila** (South Africa) said that, following a series of attacks in 2015, displaced foreign nationals in the province of KwaZulu-Natal had been given the option of being either reintegrated into communities or assisted to return to their home countries. While most of the individuals concerned had chosen one of those two options, some 130 persons had refused the solutions proposed and had been accommodated temporarily on a family farm in Cato Ridge. The local authorities were working closely with those persons to resolve the issue.

12. As to the claim, raised at the Committee's 3234th meeting, that 900 foreigners had died as a result of xenophobic attacks in recent years, figures available to the delegation indicated that, between 2000 and March 2008, at least 67 people had died in such attacks. In May 2008, a series of attacks had left 62 people dead, 21 of whom had been South Africans. Furthermore, in 2015, another nationwide outbreak of attacks had resulted in 6 fatalities; 3 of the deceased had been South African citizens. In view of the disparity between the figures quoted in the report and those at the disposal of the delegation, it would be appreciated if the Committee could indicate the provenance of the information cited.

13. Regarding initiation practices, it was important to bear in mind that, under the Constitution, everyone had the right to participate in the cultural life of their choice and that persons belonging to a community should not be denied the right to enjoy their culture. Fatalities that had taken place in the course of initiation ceremonies in recent years had occurred mainly outside the jurisdictional areas of traditional leaders, in bogus and unregistered initiation schools. As part of a zero tolerance policy to stop the death of initiates, the authorities had established a national rapid response mechanism made up of representatives of the police, the national prosecuting authority and traditional leaders to ensure that all offenders were arrested and prosecuted. Furthermore, an initiation task team had been established to monitor conditions in all initiation schools and to intervene when necessary. The Government was currently preparing legislative proposals to close identified gaps in existing laws regulating initiation schools.

14. **Ms. Shabangu** (South Africa) said that the increase in the number of reported cases of domestic and gender-based violence could be attributed in part to the establishment of Thuthuzela Care Centres, which provided victims with a friendly reporting environment and access to various relevant services. Furthermore, 43 sexual offences courts had been established across the country to deal with the backlog of cases of violence against women. In addition, victim empowerment centres had been set up in police stations as part of a

process to make sure that victims of abuse were provided with the privacy that they needed. Efforts were also under way to improve rural women's access to justice and other services through infrastructure development.

15. **The Chair** said that, where cultural practices were concerned, the Committee was interested in their compatibility with the Covenant, rather than national legislation.

16. **Mr. Shany** said that he wished to make clear that the Committee was not a fact-finding body. It did, however, receive a considerable amount of information from a variety of sources; one way for it to ascertain the veracity of that information was to confront the State party with it and to request explanations. For instance, the figure of 900 deaths from xenophobic attacks had been cited in a 2014 United States Department of State report on South Africa. Similarly, several international media outlets had reported instances of abuse in a number of correctional facilities, including Bloemfontein, Mangaung and Pollsmoor Prisons. He would provide the delegation with details of those reports.

17. With regard to paragraph 16 of the list of issues, he requested confirmation that the period for which a permit was issued for asylum transit had been shortened from 14 to 5 days under new legislation adopted in 2014. It had been suggested that the Government sought to close central refugee reception offices in order to encourage applications in border areas, but the policy caused great difficulty for an asylum seeker arriving in Johannesburg, for example, or for asylum seekers already in the country, who had to travel to a distant refugee reception office, often at considerable expense.

18. He also wished to know whether it was the case that some officials, in the Beitbridge border post, among others, had adopted a policy of not providing transit permits but rather conducted de facto status determination, sometimes refusing entry. Asylum seekers had allegedly been arrested because they lacked documentation and had not been given the opportunity to seek legal representation or been informed of their rights in a language that they understood, but had been transferred to Lindela Repatriation Centre, where, again, de facto determination was made by unauthorized police officials. Sometimes, asylum seekers were held in police cells, which was contrary to the provisions of the Covenant. He also wished to know whether the current legal framework made provision for the naturalization of unaccompanied migrant children and foundlings.

19. The State party had not provided sufficient information in reply to paragraph 30. It claimed that it continued to roll out programmes aimed at raising awareness of individuals' rights and freedoms, but non-governmental organizations (NGOs) claimed that civil society had not been consulted on the drafting of the report. He urged the State party to reconsider its position in that regard: dialogue with civil society would bring great benefits.

20. **Mr. Seetulsingh** said that he would welcome further information on paragraph 11 of the list of issues. Disproportionately few complaints of violence committed by the police were followed up: in 2014, of 5,664 such complaints, only 95 had come before the courts. That was particularly surprising, in view of the fact that there had been 244 deaths in police custody, 396 deaths as a result of police action and 124 complaints of rape committed by police officers.

21. With regard to paragraph 17 of the list of issues, he noted that asylum seekers were entitled to adequate protection, access to justice and psychosocial services, yet there had been allegations that the processing of refugees was often corrupt. Proposed amendments to the Refugees Act, 1998, it was alleged, would reduce asylum seekers' access to their rights, allegedly to deter them from applying for asylum. He wondered whether applicants were informed of their rights in writing. The Committee had also learned that there were barriers to emergency medical treatment, despite the State party's claim that people came to South Africa for free medical treatment. Moreover, since everyone had equal rights under the Constitution, it was discriminatory not to allow asylum seekers to work while their

applications were pending. In that connection, he asked how many appeals before the Refugee Appeal Board were pending and how many had been referred to the High Court. It would be useful to learn whether refugees risked deportation to places where they might be killed, tortured or ill-treated and whether, if their documentation was not in order, asylum seekers could find themselves stateless.

22. With regard to paragraph 19 of the list of issues, he would like to know whether the harsh conditions at the Lindela Repatriation Centre had improved, following a damning report by the South African Human Rights Commission. It was reported that detainees were sometimes held longer than 120 days, without being informed of their rights, that deportations were sometimes delayed because of transport difficulties and that persons with HIV or tuberculosis did not receive treatment. He asked whether any investigation had been carried out into the deaths of two people at the Lindela Repatriation Centre in February 2016 and whether the Joint Inspectorate for Correctional Services was entitled to inspect the detention facilities there and, if not, what body could do so. He also wished to know what body was responsible for inspecting police cells, psychiatric hospitals, correctional facilities for young offenders and other places of detention. Lastly, noting that the courts had ruled that the closure of the refugee reception centres in Johannesburg, Port Elizabeth and Cape Town was unlawful, he wondered whether reports were correct that the centre in Port Elizabeth had been reopened.

23. **Mr. Muhumuza** said that the delegation should tell the Committee what measures were planned to decrease or eliminate the number of deaths of persons in police custody. In that connection, he wished to know what proportion of such deaths were of foreigners. The juvenile justice system should be strengthened with more financial and human resources; there were reports that juveniles were held without due process. He wondered at what age a juvenile became an adult for the purposes of detention and how many juvenile detention centres there were at the local, provincial and national levels.

24. **Ms. Cleveland** referring to the 2014-2015 statistics provided by the State party on overcrowding in prisons, namely, average overcrowding of 32 per cent and, in five facilities, of over 200 per cent, said that the Committee would be grateful for statistics disaggregated by facility across the country. She requested confirmation of the claim that Pollsmoor Maximum Security Prison was overcrowded to the extent of 309 per cent. A delegation from the Constitutional Court had described the conditions in that prison as profoundly disturbing, and had recommended that staff-inmate ratios, access to health and the infrastructure should be improved. That approach had been seconded by the Legal Resources Centre and Freedom House and she wondered whether the State party had a comprehensive plan to address the problem or to implement a recommendation made in 2013 by the South African Human Rights Commission that the service provision in Groenpunt Maximum Correctional Centre should be overhauled and changes made to the way in which complaints of corruption and other grievances were handled. She would also like to know what measures were taken to ensure that minimum standards on hygiene, physical and mental health, decent food and access to exercise were observed.

25. Noting that the Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa (the Luanda Guidelines) were pending, she would appreciate a status update on the Guidelines and their implementation. She would also like to know if it was possible to reduce the period that detainees spent on remand by allowing for the granting of conditional bail, with oversight by correctional officials and the use of electronic monitoring. Deferrals of bail applications should be eliminated and the maximum time for remand should be reduced to below 2 years. A mechanism to review excessive time on remand should be established.

26. With regard to paragraph 25 of the list of issues, she noted that human rights defenders faced threats, harassment and intimidation at the hands of both private

individuals and the police, and that the police failed to provide protection. She would be grateful to learn what measures were taken to guarantee freedom of expression and assembly for such activists and whether the police were properly trained and equipped to protect them from violent attack. She asked what measures were taken to prosecute and punish perpetrators of violence and to provide reparation to victims. Specifically, she asked the delegation to comment on the failure to provide police services to the Khayelitsha community; on the situation in the case of the founder of the Social Justice Coalition, Angy Peter, whose appeal had been heard in April 2015; and on the situation of the activists and community health workers in Free State who had been charged with participating in an illegal gathering. She also wished to know whether police investigations had been carried out into the murder of Noxolo Nogwaza, an activist for LGBTI rights or into the complaints by Abahlali baseMjondolo and by protesters against titanium mining in Xolobeni of the use of excessive force by the police, including the firing of rubber bullets.

27. **Mr. Bouzid**, referring to paragraph 18 of the list of issues, said that the Ministry of the Interior was reportedly intending to close a refugee reception centre in Cape Town, which would violate the right to protection of migrants, including unaccompanied children. The Committee had also heard reports that the processing of asylum seekers was subject to bribery and that discrimination against women and persons of different sexual orientation was widespread. The action by reception centres to determine the status of individual refugees was reportedly full of errors. He therefore wished to know whether the Government might bring the country's legislation into line with the Covenant and also accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. He asked whether it was the case that migrants were detained for extended periods.

28. He understood that legislation currently issued only in English would in future come out in Afrikaans, but he wondered whether use of the other nine official languages of the country would also be considered. The delegation had referred to the possible use of three more languages in the future; he would welcome details on the time frame for such action. Lastly, noting that, under article 23 of the Legal Aid South Africa Act, 2013 (Act No. 39 of 2014), the Minister of Justice and Correctional Services was required to make regulations on what cases were eligible for legal aid, he wished to know whether such regulations had been issued and what they contained.

29. **Mr. Iwasawa** said that, as the Covenant contained many self-executing provisions, it was difficult to understand why treaties had to be transposed into laws or regulations before they could be enforced by the courts.

30. Referring to paragraph 44 of the replies to the list of issues, he asked how the purpose of the Regulation of Interception of Communications and Provision of Communication-related Information Act (RICA) would be achieved. Intercepting communications outside the RICA regime was unlawful, but according to the Committee's information, some such surveillance was in fact being carried out. He asked the delegation to comment on the finding by the Ministerial Review Commission on Intelligence that the National Communications Centre (NCC) carried out unlawful surveillance.

31. Under article 6 of RICA, permission to intercept communication could be granted by a judge if there were reasonable grounds to believe that a serious criminal offence had been committed. According to the written replies, communications were intercepted only in exceptional cases. However, that information seemed to be contradicted by the annual report of the Joint Standing Committee on Intelligence, according to which only 5 of 387 requests submitted under RICA had been rejected by a judge. He therefore wondered how effective procedural safeguards were in the protection of privacy. The delegation should explain how the mandatory retention of communications data was justified under article 17 of the Covenant.

32. He asked the delegation to assess the effectiveness of the project conducted by the Independent Electoral Commission with a view to providing a civic and voter education programme for the disability sector, as well as its efforts to improve access of persons with disabilities to the voting process.

33. The Traditional and Khoi-San Leadership Bill provided for the recognition of Khoi-San communities and leaders on the basis of certain criteria. According to some sources of information, the Bill had been criticized by Khoi-San groups, academics and activists, who claimed that the criteria were too strict and that the Bill entrenched the boundaries imposed by the apartheid Government in 1951; the delegation's comments in that regard would be appreciated. Furthermore, he wished to know why the Khoi-San languages were not recognized as official languages under the Constitution. Did the Constitution guarantee the right of indigenous people to receive education in the language of their choice, even if that language was not one of the official languages? What measures had been taken to promote, teach and preserve indigenous languages?

34. Referring to paragraph 29 on the list of issues, he said that the Committee would appreciate a response to claims that existing subsistence fishing quotas of indigenous groups had been taken away without warning.

35. In 2005, in his mission report on South Africa, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people had recommended that, in the case of indigenous communities that were dispossessed of their lands before the Native Land Act of 1913, positive legal and judicial action should be initiated to enable those communities to file legitimate claims for restitution. Did the 2014 amendment make restitution possible for indigenous communities that had been dispossessed of their land before 2014? The reopening of the land claims process had been criticized for the failure of the Commission on Restitution of Land Claims to process claims and for the fact that there was no budget to implement the programme; he would appreciate the delegation's commenting on that information.

36. **Mr. de Frouville** said that on 8 February 2016, the National Director of Public Prosecutions of South Africa had announced that it would bring charges against four former members of the police force from the apartheid era for murder and kidnapping in connection with the tragic case of Nokuthula Simelane who had been kidnapped, tortured and subjected to forced disappearance in 1983. He enquired why it had taken so long for the perpetrators to be charged and why so few similar cases had been investigated. Recalling that the Truth and Reconciliation Commission's recommendation that legal proceedings should be instituted in 300 cases, including the aforementioned case, he said that the State party should explain why the recommendations of the Commission had not been implemented, and what measures would be taken to ensure their implementation in the future.

37. Furthermore, 478 missing persons had been identified, 64 of whom had allegedly been victims of forced disappearances. According to some sources, the actual number of missing persons was around 2,000. He requested information on the results of the work of the missing persons task team, including how many bodies had been found, identified and returned to families and how many cases remained pending.

38. **Sir Nigel Rodley** asked whether there were groups in South Africa with polyandrous customs. If not, he said he wished to know whether a polyandrous marriage would be concluded in a State registry or under common law and in that case, what rights the spouses would have in the event of separation, dissolution or death. Lastly, he requested updated information on measures taken to deal with deaths in custody.

39. **Mr. Rodríguez-Rescia** asked what measures the State party had taken to fight against corruption that affected participation in public life. He would also welcome

information on measures to prevent political parties from being financed in a way that encouraged corruption, hindered political participation, enriched civil servants and established a culture of impunity.

The meeting was suspended at 11.40 a.m. and resumed at 11.55 a.m.

40. **Mr. Jefferey** (South Africa) said that while the Government was aware of the issues involving remand detainees, communities often opposed the release on bail of suspects who had committed serious crimes. The Government was working to process cases more quickly at various levels of the court system and give priority to backlog cases.

41. With regard to questions on interception of communications, he said that privacy rights were protected under the Constitution. To his knowledge, no applications relating to the constitutionality of RICA had been submitted. However, the Government would soon be meeting with one association in order to discuss its concerns in relation to RICA.

42. Regarding polygamy, since the Recognition of Customary Marriages Act was not gender-specific, it might be possible for polyandry to take place as well. Responding to a question on the Independent Electoral Commission, he said that a disability policy had been adopted by the Cabinet, which included measures to help persons with disabilities to participate in elections. Information on that policy would be provided to the Committee.

43. The Government was working with the Human Rights Commission in order to improve the monitoring of detention facilities. Responding to the question on missing persons, he said that, to date, 101 bodies had been recovered; of those, 81 bodies had been identified and returned to families. Currently 500 further cases were being investigated. Around 300 cases had been handed down to the National Director of Public Prosecutions by the Truth and Reconciliation Commission. However, evidence that had been given before the Commission could not be used against a person in a criminal court. Only seven cases were still pending. Four people had been arrested for the murder and disappearance of Nokuthula Simelane. The perpetrators had been charged in February 2016, then released on bail; the date for the trial would soon be announced.

44. With regard to human rights defenders, the Government would address related concerns with civil society organizations. South Africans had the right to protest and did so quite regularly. Such protests often resulted in damaged property, including to schools, libraries and factories. Referring to the specific cases queried by the Committee, he said that the South African legal system was generally recognized as fair and any court sentences could be appealed to the Supreme Court of Appeal and the Constitutional Court.

45. Regarding the Protection of Personal Information Act, the initial delay in implementation was due to an internal matter; an Internal Regulator was expected to be appointed in the near future. Turning to the issue of political party financing, he said that there had recently been a request that the Government should be compelled to adopt legislation to monitor party funding. The application had been rejected on grounds that the applicants should have made use of the Promotion of Access to Information Act to request details on party funding. However, the Government was currently debating the issue.

46. In order to be approved by the President, laws had to be drafted in English and in one of the other 10 official languages, which was chosen on the basis of a roster. The Constitution had been translated into 11 official languages and into Braille.

47. **Mr. Nwaila** (South Africa) said that, on 2 March 2016, the National Khoi-San Council had appeared before the Portfolio Committee which was considering the Traditional and Khoi-San Leadership Bill. The concerns raised in relation to the Bill would be considered. However, as the Khoi-San people were scattered throughout the country, the aim of the Bill was to ensure that they could identify themselves. Some people believed that the Bill reinforced apartheid boundaries. However, under traditional leadership, there were

no boundaries but jurisdictional areas which sometimes overlapped with municipal areas. The Government would consider self-identification criteria for people living outside those areas as well.

48. Responding to a question on the Khoi-San languages, he said that they had not been codified by the time the South African Constitution had been adopted. The Pan South African Language Board was responsible for developing those and other African languages.

49. **Mr. McKay** (South Africa) said that, under the amended Refugee Act, the asylum transit period could indeed be reduced from 14 to 5 days. Most asylum seekers entered South Africa through its north-eastern border. One refugee reception centre was located in Musina, which was about 10 km from the border area, so most persons entering the country could reach the centre within five days. Those who entered through the Lebombo border post could travel to the nearest reception centre in Pretoria within a day. All asylum seekers who made their intention to apply for asylum known were issued with an asylum transit permit, which allowed them to travel to the nearest asylum centre. The Refugee Act also allowed for entry without documents, in which case the persons concerned had to be transported to the nearest asylum centre. The Government would investigate any allegation of Beitbridge authorities not issuing transit permits and would deal with officials found to be denying asylum seekers their rights.

50. NGOs had been consulted on the proposed Refugee Act. Their proposals had been included in the draft legislation which would be submitted to Parliament and they would also have an opportunity to participate at the parliamentary level.

51. Deportees were kept at various locations. Undocumented migrants arrested in a given province often came from countries that bordered that province and they were deported directly from the province to their countries of origin. The Lindela Repatriation Centre was reserved mainly for persons from countries neighbouring the Gauteng Province and for those arrested in the rest of South Africa who were from countries further to the north, from South-East Asia or other parts of the world. Those people had to be deported using air transport.

52. With the notable exception of the right to vote, asylum seekers and refugees enjoyed many of the same rights as South African citizens, including with regard to access to mental health and psychosocial services. There were no restrictions on their rights to work or to study and their social integration was encouraged.

53. While the South African Human Rights Commission was the body chiefly responsible for oversight of Lindela Repatriation Centre, the International Committee of the Red Cross and the Portfolio Committee on Home Affairs conducted regular visits and reported their findings.

54. The decision of the Department of Home Affairs to close two refugee reception offices in Port Elizabeth and Cape Town had been challenged before the Supreme Court of Appeal and the Constitutional Court, both of which had ordered the reopening of the Port Elizabeth office. The Department had been in the process of executing the order, but had encountered resistance from local business owners near the site identified for the office. It was therefore trying to find an alternative location and, in the meantime, was sending monthly progress reports to the Constitutional Court.

55. The Government was considering signing the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, and in the meantime was working to ensure that all the prerequisites for signing and ratifying the two Conventions were satisfied.

56. **Ms. Rotmann** (South Africa) said that the transfer of inmates to alleviate prison overcrowding was made harder by the fact that remand detainees had to be close to the

court where their trial was being held and that the proximity of convicted offenders to their community was a major factor in the success of efforts to rehabilitate them.

57. In response to the report on Pollsmoor Prison published by Constitutional Court Judge Edwin Cameron, inmates had been temporarily moved to other facilities to enable the prison authorities to address some of the issues that had been raised. Further visits had subsequently been undertaken by another Constitutional Court judge and by the Judicial Inspectorate for Correctional Services. The findings, when presented, were expected to be more positive. Since Judge Cameron's visit, overcrowding had been reduced, a new on-site pharmacy had opened and additional nurses and psychologists had been recruited. There were also plans to increase the maintenance budget and to improve the waste disposal and laundry facilities.

58. Many prisons in South Africa had been built prior to 1994 and were poorly equipped to promote rehabilitation. Steps were being taken to resolve ventilation issues and to create more space for recreational activities, the organization of which was complicated by the necessary separation of prisoners belonging to rival gangs. In the Western Cape, two new facilities with a combined capacity of over 600 prisoners would be opened in the near future.

59. Under the Code of Criminal Procedure, judges could rule on whether the continued detention of remand prisoners was justified at any time. The cases of persons detained on remand for over two years were automatically referred to court for reconsideration. Electronic tagging was viewed as a possible means of reducing the number of remand detainees, but greater cooperation was needed between the judiciary and the prison authorities before use of the measure could be expanded. Representatives of the Department of Correctional Services had participated in several workshops on the Luanda Guidelines and had provided input on the development of indicators in that regard.

60. At Grootvlei Prison, serious infrastructural problems had been identified and catering services had been outsourced. Nevertheless, substantial progress was being made and the occupancy rate stood at 127 per cent, which was below the national average.

61. No persons under the age of 14 years were detained. Individuals aged 14 to 17 were treated as children and those aged 18 to 20 as juveniles. Where possible, juveniles and adults were detained separately. Disaggregated data on the prison population and information regarding the Mangaung Correctional Centre would be submitted to the Committee in writing.

62. **Mr. McKay** (South Africa) said that refugees were entitled to reside in South Africa and were never deported. Asylum seekers whose applications were rejected had the right of appeal and could also apply for judicial review of the decision. Only once all appeals had been exhausted could they be returned to their country of origin.

63. Migrants could be detained for an initial period of 30 days, which could be extended by a further 90 days by a magistrate. Applications for an extension had to be submitted to court by day 25. On day 120, detainees had to be released or deported. Any failure to satisfy procedural guidelines would result in detainees being released. Migrants could not be detained unless it was made clear to them that there were suspicions about their status. Once detained, assistance had to be provided in confirming their status and nationality. Only persons found not to possess the necessary documentation could be transferred to Lindela Repatriation Centre. Unaccompanied minors and other persons belonging to vulnerable groups were not detained; instead, they were kept in places of safety.

64. **Mr. Jefferey** (South Africa) said that all persons were entitled to representation in criminal matters if substantial injustice might otherwise result. Legal aid was provided on the basis of a means test and the amount was set in the Legal Aid Guide, which was

approved by Parliament. Steps were being taken to increase the availability of legal aid in civil cases. Under the Legal Practice Act, the South African Law Reform Commission had been tasked with investigating the high cost of litigation in South Africa.

65. The Child Justice Act applied to persons who were arrested or summoned to appear in court prior to their eighteenth birthday and, at the request of the chief prosecutor, to persons aged under 21 years who had committed the offence for which they were being tried prior to their eighteenth birthday. Since the adoption of the Act, there had been a significant decrease in the number of minors sentenced to imprisonment in a detention centre or a secure care facility, of which there were 31 in the country, with a bed capacity of 2,696. Following a review, a proposal was set to be considered by Parliament to raise the minimum age of criminal capacity from 10 to 12 years, with a rebuttable presumption that children who were between 12 and 14 years old were incapable of committing a criminal act.

66. **Sir Nigel Rodley**, noting that the delegation had not yet provided updated information on the measures taken to prevent deaths in police custody, nevertheless commended the role that the State party had played in the revision of the Standard Minimum Rules for the Treatment of Prisoners, which would contribute significantly to enhancing the protection of prisoners.

67. Turning to the issue of regional remedies for human rights violations, he said that he wished to know why the State party had agreed to the removal of the possibility of individual petitions to the Southern African Development Community Tribunal and to the Tribunal's subsequent dissolution.

68. **Mr. Muhumuza** urged the State party to continue to guarantee the independence of the judiciary and the accessibility and affordability of defence counsels.

69. **Ms. Cleveland** asked whether it was true that inmates at the C Max and Ebongweni maximum security prisons had been subjected to solitary confinement and, if so, why.

70. **Mr. Shany** said that he wished to know whether asylum seekers were entitled to have legal assistance assigned to them during the asylum determination process in all cases where the interests of justice so required.

71. **Ms. Shabangu** (South Africa) said that the upcoming twentieth anniversary of the adoption of the Constitution had brought a renewed commitment to the advancement of human rights in South Africa. The Government had launched programmes to raise awareness of human rights issues and was organizing campaigns to celebrate the International Day for the Elimination of Racial Discrimination on 21 March. It had taken note of the Committee's questions and recommendations, and would endeavour to submit any outstanding replies within 48 hours.

The meeting rose at 1.05 p.m.

United Nations CCPR/C/SR.3236

International Covenant on Civil and Political Rights

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Human Rights Committee
116th session

Summary record of the 3236th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 8 March 2016, at 3 p.m.

Chair: Mr. Salvioli

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Namibia

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Namibia (CCPR/C/NAM/2; CCPR/C/NAM/Q/2 and Add.1)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Mr. Kawana** (Namibia), introducing the second periodic report of Namibia (CCPR/C/NAM/2), said that prolonged drought and economic constraints had hampered the Government's efforts to fully implement the Covenant in recent years. However, it had adopted various policies and programmes aimed at upholding civil and political rights and had increased the budget of the Office of the Ombudsman to enable it to investigate human rights violations. Steps had also been taken to tackle unemployment and poverty, including through the establishment of the Ministry of Poverty Eradication and Social Welfare, the provision of social assistance grants for vulnerable groups and the adoption of standards on working conditions for domestic workers. Discussions were also under way on the introduction of a national minimum wage. As to the absence of specific legislation prohibiting acts of torture, the Law Reform and Development Commission had recently drafted a bill that explicitly defined torture as a criminal offence in its own right; that bill was due to be submitted to Parliament by the end of 2016.

3. The Government had adopted the Child Care and Protection Act, which covered areas such as juvenile justice, adoption and the protection of children from harmful cultural practices, and it had appointed the first Children's Advocate within the Office of the Ombudsman. It had also established free primary and secondary education for all school-age children. The abuse and ill-treatment of women and children remained a serious concern despite the introduction of legislation to combat domestic and gender-based violence. The Government continued to work with NGOs and other stakeholders to improve the support services available to victims of such violence and to raise the general public's awareness of the rights of women and children. Efforts had also been made to strengthen the provisions of the Combating of Domestic Violence Act and the National Gender Policy.

4. The Government had launched a refugee integration policy to facilitate the integration of Angolan refugees into Namibian society and was working closely with the Regional Office of the United Nations High Commissioner for Refugees in South Africa to support persons seeking asylum.

5. **Mr. Seetulsingh**, in reference to the first question in the list of issues, said that he would like further clarification regarding the status of the Covenant in the domestic legal order. The Committee remained concerned about the possibility that an Act of Parliament could invalidate international obligations assumed by the State party. He also wished to know whether steps had been taken to establish a mechanism for implementing the Views adopted by the Committee under the Optional Protocol and for giving effect to the Committee's Views (communication No. 919/2000) on the case of *Müller and Engelhard v. Namibia*. Did the State party's responses in paragraphs 7 and 8 of its replies to the list of issues (CCPR/C/NAM/Q/2/Add.1) mean that, if the Committee found in favour of a complainant, that person would have to enter a fresh case before the Namibian courts in order to enforce his or her rights under article 25 (2) of the Constitution? Updated information on the status of the proposed amendments to the Ombudsman Act would also be appreciated. Concerning discrimination on the grounds of disability, he would like to know what measures had been taken to facilitate access for persons with disabilities to the

open labour market and to ensure that companies complied with their affirmative action obligations pursuant to section 106 of the Labour Act. Information on whether specific policies had been introduced to inform persons with disabilities of their rights and protect them from discrimination would also be welcome.

6. **Mr. Bouzid** asked what steps had been taken to implement gender equality legislation and combat gender-based discrimination. He also wished to know what programmes had been established to counter the stigmatization of persons with HIV/AIDS, particularly women, to combat discrimination against them and to provide equal access to appropriate medical treatment and counselling. Information on efforts to eradicate the practice of forced sterilization of women with HIV/AIDS and to obtain informed, prior consent in the case of voluntary sterilizations would also be appreciated. Regarding the lesbian, gay, bisexual, transgender and intersex community, he asked what steps had been taken to prevent discrimination and human rights violations based on sexual orientation and to ensure that such offences were investigated and duly prosecuted.

7. Lastly, he would appreciate further information about the status of the bill on the crime of torture and the reasons for the delay in its adoption. Would the delegation please comment on reports that some police officers used excessive force and allegations that they regularly detained sex workers and coerced them into having sex before their release? Further information on the measures taken to prosecute police officers found guilty of torture or rape, along with specific examples, would also be useful. Information on the steps taken to ensure the independence of the police force would be welcome.

8. **Ms. Pazartzis**, referring to paragraph 4 of the list of issues, said that, while the Committee welcomed the adoption of the National Human Rights Action Plan, it would be interested to hear more about concrete legislative reforms. Concerns had been raised by civil society about the continuing lack of a system for recording customary marriages, the prevalence of polygamy and the existence of discriminatory grounds and procedures for customary divorce, and she would therefore appreciate details on the status of the Bill on Recognition of Customary Law Marriages. When was it expected to come into force? Pending the enactment of that law, what specific measures had been taken to promote the registration of customary marriages and eliminate the discrimination faced by women married under customary law? How was the implementation of section 26 (2) of the Communal Land Reform Act monitored? She was particularly interested in receiving such information in the light of reports of the continuation of the traditional practice whereby family members confiscated the property of deceased men from their widows and children. She would like to know whether the State party had any intention of reviewing Native Administration Proclamation 15, which dealt with marriage and inheritance matters under customary law and provided for differentiated treatment of such matters on the basis of race, and would welcome the delegation's comments on the fact that race-based practices continued to apply despite the adoption of the Estates and Succession Amendment Act in 2005. What was the status of the bill on intestate succession, under which the same rules would apply to persons of all races?

9. Turning to paragraph 5 of the list of issues, she wished to know whether the State party was aware of cases in which children born out of wedlock were denied their inheritance, despite the existence of legislative provisions guaranteeing them equal rights in such matters. Were such cases reported and, if so, how common were they? When was the Child Care and Protection Act of 2015 expected to come into force?

10. **Sir Nigel Rodley**, noting that the Committee traditionally encouraged States parties to find remedies for possible human rights violations at the regional as well as national level and thus considered it a step backwards when a potential remedy was terminated, asked the delegation to comment on why Namibia had gone along with the decision to dissolve the Southern African Development Community (SADC) Tribunal. Referring to the

reply to paragraph 7 of the list of issues on access to abortion (CCPR/C/NAM/Q/2/Add.1), he requested clarification of the provision that one of the circumstances in which abortion would be allowed was if "the foetus had been conceived in consequence of illegitimate carnal intercourse and the woman was, owing to a permanent mental handicap or defect, unable to comprehend the implications of or bear the parental responsibility for the 'fruit of coitus'". Was it true that judges refused to authorize the termination of pregnancies resulting from unlawful intercourse? He wondered whether the fact that two doctors, in addition to the woman's doctor, had to certify the existence of grounds for an abortion and that judicial authorization was also required could cause undue delays in the performance of abortions, bearing in mind that terminations were not performed after the first trimester. It seemed that procedures for accessing abortion services were so cumbersome that those services were virtually unavailable. He invited the delegation to comment on the practice of "baby dumping" — in other words, the abandonment of newborn babies — and on its possible linkage to the difficulty of obtaining a lawful termination. He would like to know whether the State party might consider reviewing its legislation on abortion. What measures were being taken to provide support to young and/or single mothers and protect them from stigmatization? Did young people have access to contraceptives?

11. Noting that, in its written replies to paragraph 12 of the list of issues, the State party had asserted that most of the alleged harmful practices against women and girls cited by the Committee were not practised in Namibia and that the remainder were not harmful, he invited the delegation to comment on reports by United Nations agencies and reputable NGOs, as well as statements made in a publication by the Ministry of Gender Equality and Child Welfare, which indicated that such practices continued to be carried out in some parts of the country. He would welcome details on the research findings mentioned in the country's replies which indicated that female genital mutilation was traditionally not practised in Namibia. He would be interested to know what measures were taken to investigate allegations of rape, what monitoring strategies were in place to improve police investigations of cases of gender-based violence, how the Gender Protection Unit had been strengthened, and how the strategies and activities called for under the national plan of action on gender-based violence had been implemented. The Committee would be grateful for statistics on sentencing in rape cases and on the number of cases in which remedies had been awarded to employees who left their jobs owing to sexual harassment.

12. **Ms. Cleveland**, referring to paragraph 10 of the list of issues, asked what statistics the State party collected that had a bearing on the issue of gender balance and on the gender wage gap in both the public and private sectors. What steps were being taken to eliminate the wage gap? She would like to know whether the authorities had looked into the situation, as the country had announced that they would in response to a 2013 UN-Women study indicating that the wage gap amounted to at least 16 per cent. If so, what had that inquiry disclosed and what further action would be taken? She would appreciate information on the action taken in response to the 2015 recommendations of the Committee on the Elimination of Discrimination against Women regarding the removal of structural inequalities, the elimination of occupational segregation and increased representation of women in managerial positions in the private sector. Noting that the fact that there had been no court cases involving gender-based discrimination did not mean that there was not a problem but rather that women might lack sufficient access to information or the means to bring cases to court, she asked what efforts had been made to educate the general public about the problem of gender discrimination in employment and to establish and publicize complaint mechanisms and provide legal aid to women.

13. With regard to paragraph 11 of the list of issues, she would be interested to know what steps had been taken to implement the recommendations of the 2014 National Conference on Gender-Based Violence, which had included measures for improving the procedures for reporting cases at police stations in order to make them victim-friendly and

discourage the withdrawal of cases. Information would be welcome on the State party's plans to expand access to the special units that were in place to protect people from gender-based violence and to ensure that they were properly resourced, as well as on the number of shelters nationwide and their capacity. Were national budget resources specifically earmarked for those services? What steps had been taken to make it easier for women to obtain protection orders in rural areas and elsewhere? She wished to know whether steps had been taken to authorize persons other than magistrates to issue such orders, to arrange for the submission of applications for protection orders at times when the courts were closed and to make such orders available for persons exposed to abuse in same-sex relationships. The non-enforcement of protection orders was a cause of concern, as was the practice of granting bail to persons who had committed repeated acts of domestic violence, including rape. Information would therefore be welcome on the guidelines for granting bail to perpetrators of domestic violence and the measures in place to protect women when violations of protection orders were reported. She would be interested to hear more about the content of the training provided to law enforcement officials, judges and prosecutors on how to handle incidents involving gender-based violence and to learn how many individuals had been trained to date. What efforts were being made to educate society at large, especially men and boys, about domestic and gender-based violence? She invited the delegation to comment on reports that 542 cases of domestic violence had been reported between February 2012 and February 2013, including 30 cases of attempted murder and 24 cases of murder. She wished to know whether the cases of domestic violence resulting in murder or attempted murder had been investigated and, if so, how many of those investigations had led to prosecutions and convictions. What steps were being taken to address the large gap between the number of rape cases reported and those that were ultimately prosecuted? She would welcome clarification on the law under which mitigating circumstances for violent crimes were established, on the measures being taken to ensure that women were not hindered from leaving abusive marriages by the obligation to repay their bride price, or *lobola*, and on efforts to address the increase in the number of passion killings.

14. **Mr. de Frouville** said that he would appreciate updated information on the results of the investigations into reports of mass graves containing the remains of persons killed by security forces between 1994 and 2003. With regard to allegations that members of the South-West African People's Organization had been subjected to torture and enforced disappearance during the war of independence, he wished to know how justice was being served and what reparation was being provided to the victims.

The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.

15. **Mr. Ndjoze** (Namibia) said that the Covenant had become part of Namibian law upon its ratification and that no Act of Parliament that renounced any of the State's obligations under the Covenant could be enacted. The Covenant still needed to be promulgated in the official gazette, however. Those of the provisions of the Covenant that were not self-executing must be incorporated into national legislation before they could be implemented. The Government was aware of suggestions made by the Ombudsman as to how the Office of the Ombudsman might be brought into line with the Paris Principles, but it had not yet received a concrete proposal in that regard. The Government supported some of those suggestions, such as the one regarding the extension of the Ombudsman's mandate to cover economic, social and cultural rights. With regard to control over the budget and the recruitment of staff, the Office of the Ombudsman did have its own budget as a subdivision of the Ministry of Justice. As was the case for all government bodies, allocations from the national budget were subject to the availability of resources.

16. **Mr. Kawana** (Namibia) said that, in the light of the drought that had been affecting the country for the past three years, it had been necessary to revise the budget in order to

devote more resources to farm subsidies. Replies to the questions about persons with disabilities would be submitted in writing.

17. **Ms. Böhlke-Möller** (Namibia) said that discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status was prohibited under article 10 of the Constitution. One of the main focuses of the National Human Rights Action Plan was the right not to be discriminated against. Consultative workshops had been held to identify the vulnerable groups that were most likely to suffer discrimination, which included persons with disabilities, women and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. The objectives of the Plan were, inter alia, to gather information on the extent to which the rights of persons with disabilities, indigenous peoples, women and LGBTI persons were infringed upon; to intensify education and awareness-raising efforts; and to implement legal and regulatory reforms that would give effect to the non-discriminatory provisions of various international and regional instruments. New legislation would be developed to prohibit discrimination on grounds of albinism, gender and disability and to classify racial name-calling as a form of hate speech.

18. The Law Reform and Development Commission was currently working on legislation to protect persons with disabilities. LGBTI persons were not being victimized because of their sexual orientation. Pursuant to the right to privacy enshrined in the Constitution, they could do what they wished in the privacy of their own homes. They were not asked to disclose their sexual orientation on any official forms, nor could they be refused access to services on the basis of their sexual orientation. Same-sex marriage was not, however, recognized under Namibian law. The Supreme Court had interpreted article 14 of the Constitution to mean that marriage referred only to a union between a man and a woman. Her delegation took note of the recommendation to repeal the "anti-sodomy" law.

19. The Affirmative Action Act provided for measures to create equal opportunities for women in employment. Currently, 40 per cent of managerial positions were held by women, 60 per cent of all employees were women, and 50 per cent of professional employees were women. Racial discrimination was a criminal offence under Namibian law, and there was absolutely no legal or political support for any scheme that would condone the domination of one race, tribe or group over another. Since its independence, Namibia had consistently followed a policy of national reconciliation.

20. **Mr. Kawana** (Namibia) said that the Married Persons Equality Act established equal property rights for men and women. Any discrimination against women in that regard was therefore unlawful. The only instance in which persons living with HIV were treated differently from others was in the armed forces. While such persons could be recruited into the armed forces, they could not take up physically demanding duties that might cause their health to deteriorate.

21. There were some cases in which the courts had ruled that persons who believed that they had been subjected to forced sterilization were entitled to compensation. However, while those persons had not been given adequate information at the time that they had undergone that procedure, the sterilization had not taken place under duress. Current sterilization practices were fully in line with international standards, and the persons concerned were properly informed about the procedure beforehand.

22. A new bill on torture would be submitted to Parliament some time in 2016, once the debates on the budget were completed. The definition of torture contained in that bill was the same as the one set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

23. The Law Reform and Development Commission was currently considering the issue of customary marriage as part of what was known as the Family Law Project. The Committee members' concerns would thus be addressed in the forthcoming bill. The

tradition of paying *lobola* was comparable to the Western tradition of buying an engagement ring and was a way for a man to express his love for a woman. While the Government had no intention of abolishing the practice, one option would be to prohibit any demands for repayment of *lobola* in cases where a marriage had irretrievably broken down. Along the same lines, while it was not feasible to abolish polygamy, it would be possible to pass regulations on the rights and obligations of husbands and wives in polygamous marriages. The courts had ruled that certain provisions of the Native Administration Proclamation of 1928 relating to civil marriages and community of property were discriminatory. Those provisions would thus be repealed, and the Law Reform and Development Commission was currently working on a bill to that effect.

24. Campaigns were currently under way to raise awareness about domestic violence, and those campaigns were being led largely by men. Awareness-raising sessions were being held with traditional leaders, governors, chairpersons of regional councils and other prominent community members, as well as with male students and male office employees.

25. The issue of the inheritance rights of children born outside wedlock had been addressed in legislation that had been passed in 2006, and all children in Namibia currently had equal access to care and equal inheritance rights. Under the 2003 Maintenance Act, parents had a legal duty to support their children regardless of whether they had been born inside or outside marriage. If a parent failed to fulfil his or her obligations in that regard, a judge could issue an order obliging employers to withhold a portion of that parent's salary which, via the courts, would then be paid to the person with physical custody of the child.

26. The prerogatives of the SADC Tribunal had been questioned by member States, and the Tribunal was now in the process of being reconstituted with a new mandate. Namibia had been one of the first countries to sign the protocol on the new Tribunal and was currently waiting for other SADC member States to follow suit.

27. Abortion was a contentious issue due to prevailing cultural, traditional and religious beliefs. During the 1990s, an attempt by the Government to legalize abortion on demand had ended in failure when the country's Christian churches had mobilized their congregations against it. The issue was now once again on the agenda, and it was likely that the Cabinet would approve a proposal for a national referendum on a law to legalize abortion on demand. Namibia had taken measures to address the problem of child abandonment, or, as it was sometimes called, "baby dumping". The Government had made it known that it was ready to step in and look after unwanted children, and mechanisms and agencies had been set up to accommodate them. The implementing regulations for the 2015 Child Care Protection Act would be approved very shortly, and at that time the Act, which also covered national and international adoption, would come into force. Contraception was currently available free of charge in all State health institutions. Youth centres staffed by young people also distributed contraceptives, particularly in rural areas.

28. A study had been carried out on harmful practices affecting women and girls, including female genital mutilation, although it was not widely practised in Namibia. Some cultural practices had recently been revived in a modified form, including one in which girls who had their first menstrual cycle would go on a retreat with older women and be given advice on avoiding unwanted pregnancies and other family planning issues. The revival of the practice known as *olufuko* had become extremely popular and, although it had met with resistance from some quarters, it was conducted with good intentions and participation was voluntary and free of charge. In the areas where it was practised, pregnancy rates among girls had dropped dramatically. Schoolgirls who did get pregnant were not expelled but could resume their schooling after giving birth. Namibia placed great importance on education and was one of the few countries in the world in which that sector received the largest single allocation from the national budget. More girls than boys were enrolled in school, and up to 60 per cent of university graduates were women.

29. It was true that women and girls would sometimes file a complaint of rape or sexual harassment with the police only to withdraw it a few days later due to pressure from family members. Under new legislation, even if a complaint were withdrawn, the prosecution would proceed if there was overwhelming evidence to support the complaint. However, since evidence was often difficult to come by in such cases, the success of the new measures was uncertain. It was hoped that two important pieces of legislation due to be enacted later in 2016 — the Witness Protection Act and the Whistle-blowers Protection Act — would help to strengthen the position of complainants. Under the Labour Act of 2007, sexual harassment in both the public and private sectors was a criminal offence. However, the Government would consider the matter further in the light of the Committee's suggestions regarding compensation for victims. The authorities had appealed to NGOs and to society at large for suggestions regarding the content of new legislation on gender violence. Many excellent proposals had been received and were currently being examined.

30. Issues revolving around the number of women in high-level decision-making positions were likely to be resolved through education, especially in the light of the high percentage of female university graduates. The governing party had amended its internal regulations to make it obligatory for all leadership and decision-making positions within the party to be distributed equally between men and women. Thanks to those measures, currently 47 per cent of the Members of Parliament were women, as were the Prime Minister and the Deputy Prime Minister. The party's commitment to gender equality also extended to the local government level, where 48 per cent of all local authorities were women. It was now important to encourage other political parties to introduce a similar requirement of equal gender representation. The Office of the Prime Minister was working on a policy called the New Equitable Economic Empowerment Framework whereby the ownership of a certain percentage of private sector enterprises and assets would be allocated to previously disadvantaged persons, as defined in article 23 of the Constitution. That included women, both black and white, persons who had suffered oppression as a result of apartheid and persons with disabilities.

The meeting rose at 6 p.m.

United Nations CCPR/C/SR.3237

International Covenant on Civil and Political Rights

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15 March 2016

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Human Rights Committee
116th session

Summary record of the 3237th meeting
Held at the Palais Wilson, Geneva, on Wednesday 9 March, 2016, at 10 a.m.

Chair: Mr. Salvioli

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Namibia (continued)

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The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Namibia (continued) (CCPR/C/NAM/2; CCPR/C/NAM/Q/2 and Add.1)

1. *At the invitation of the Chair, the delegation of Namibia took places at the Committee table.*

2. **Mr. Kawana** (Namibia) said that, with regard to the discovery in 2003 and 2009 of what were said to be mass graves in the area that had been called the Caprivi Strip in colonial times and was now called the Zambezi Region, he could categorically deny that such graves were the responsibility of the South West Africa People's Organization (SWAPO). Similar allegations had been made some decades earlier concerning graves in Kavango, but the sole aim of those claims was to tarnish the good name of Namibia. The country's territorial integrity was not negotiable. Its boundaries had been defined by the League of Nations in the 1920s on the basis of an Anglo-German agreement of 1890 and a treaty between Germany and Portugal concluded in 1888. The graves found 20 years earlier had turned out to be the product of atrocities committed by the South African apartheid regime. He invited the Committee to come and look at the evidence on the ground. Following 24 years of war, SWAPO had won a fair election supervised by the United Nations and had set up a national reconciliation process which had included the adoption of an amnesty law covering all combatants. The country had subsequently formed a unified army, a unified police force and a unified prison service, all of which were efficient. Namibia was one of the best-governed countries in Africa.

3. **The Chair** said that the Committee did not seek to question the territorial integrity of any State. It commented only on the implementation of the Covenant.

4. **Ms. Cleveland** said that she had received no reply to her question concerning the regime for the protection of victims of domestic violence. She would be interested to know whether the range of personnel empowered to issue protection orders would be extended; whether such orders could be issued outside the working hours of the courts; whether the process for obtaining an order would be streamlined; and whether access to shelters and protection measures for survivors of domestic violence would be improved.

5. The delegation had said that the Government was considering draft legislation that would enhance the rights of persons with disabilities. She would be grateful for further information on that score. It had also said that lesbian, gay, bisexual and transgender (LGBT) persons were not discriminated against. However, according to civil society sources, LGBT persons were not covered by important legislation such as the Combating of Domestic Violence Act, which did not apply to same-sex partnerships. Moreover, the provision in the Labour Act that had established sexual orientation as a prohibited ground for discrimination had been removed. She also noted that the State party invoked the common-law crime of sodomy as justification for not distributing condoms in prison, although such an approach had serious health implications. There had also been multiple reports of discrimination, harassment and violence against LGBT persons by the police, including cases of so-called "corrective rape", which had gone unpunished. It also appeared that a significant number of racially discriminatory laws adopted during the time of apartheid had not yet been repealed. Although the laws were not used, she would like to know whether the Government intended to abrogate them. She also wished to know whether the Government planned to work with civil society to develop formal guidelines on informed consent for sterilization. She also wished to know whether legislation would be adopted to prohibit demands for the return of a bride price, or *lobola*.

6. With regard to paragraph 15 of the list of issues, she recalled that the Committee had requested, but not received, statistics on child labour from the State party. Did Namibia collect statistics on child labour, forced labour and trafficked persons and, if so, where could such statistics be found? As for the question of whether children between the ages of 16 and 18 could legally do hazardous work, the Committee understood that the Labour Act prohibited night-time work and work done underground or in a mine for that age group, but that the Minister could permit such activities by regulation. She would like to know whether such regulations had been issued and, if so, for what work and involving how many children.

7. The State party had said that labour inspectors could obtain assistance from Agriculture Regional Employers Forums in obtaining access to private farms which had refused them entry. Since the lack of access to farms was a major obstacle to the enforcement of child labour laws, she would like to know how many labour inspections of private farms had been successfully conducted over the past two years, how often access had been denied and how the matter had been resolved in each case. She would like to know whether the Government planned to provide labour inspectors with vehicles. More generally, she would welcome information on the budget of the Labour Inspectorate, the number of labour inspectors, the mechanism for bringing potential labour violations to the Inspectorate's attention, the total number of inspections conducted over the past two years, the number of compliance orders issued and the results of those orders. She wondered whether there were plans to increase the budget of the Inspectorate or the number of inspectors. She would also be interested to learn what mechanisms existed to enforce penalties imposed on employers who did not comply with child labour laws or the minimum wage law. She wished to know how many incidents involving insufficient compensation or unduly long working hours for farmworkers or domestic workers had occurred in the past two years and what action had been taken by the Government. According to the State party report, there had been two cases before the courts in 2015, of which one had resulted in acquittal and the other in a 13-year prison sentence. What facts and legal issues had been involved in those cases?

8. The Committee would like to know what changes were being made in the draft anti-trafficking bill and the anticipated timeline for its enactment. It would also like to know about the work of the interministerial committee on human trafficking that had been established following the release of the United States Department of State 2015 *Trafficking in Persons Report*.

9. She would be interested to learn what proposals the Criminal Justice Forum had put forward for reducing the use of pretrial detention and whether any of the proposed reforms were likely to be enacted. She would like to know what the average length of pretrial detention was and what measures had been taken to reduce its use, whether by increasing access to bail, providing for non-custodial alternatives, such as electronic monitoring, or expediting the pretrial investigation process. The Ombudsman had reported that 87 detainees across the country were awaiting pretrial mental assessments. What steps had been taken to expedite that process? She would welcome data on the number of cases in which the rule that persons should be brought before a judge within 48 hours of their arrest had not been complied with, the associated circumstances and the steps taken to ensure compliance. As for the delay in processing appeals, the Committee would like to know whether any action had been taken in response to the Ombudsman's findings in 2013 concerning delays in the preparation of appeal and review records. She also wished to know whether anyone was currently being held under the Prevention and Combating of Terrorist Activities Act or had been arrested under that law in the past two years, and, if so, under what circumstances.

10. With regard to refugees and asylum seekers, she would welcome confirmation that persecution because of an individual's sexual orientation or gender identity was recognized as grounds for granting asylum and for observance of the principle of non-refoulement under Namibian law. The Committee would like to know how many individuals had sought refugee status on those grounds and how many had been granted protection. She wondered whether the State party had considered developing guidelines on the handling of refugee claims based on sexual orientation or gender identity. The Committee had also received reports that some cases involving unaccompanied children had gone unprocessed for years and that some children had been denied asylum. She would be grateful to know whether the State party planned to incorporate the standard of the best interests of the child into its asylum law and what practical steps had been taken to ensure protection for minors throughout the asylum process.

11. The State party had recently agreed to allow Angolan refugees to remain in Namibia. Following the closure of the country office of the United Nations High Commissioner for Refugees in Namibia, she would be interested to learn whether the State party was considering taking steps to promote the full local integration of refugees by granting them permanent residence permits and eventually closing the Osire refugee camp. Lastly, she wished to know whether the ruling in *Zhu v. Minister of Home Affairs and Another* was systematically complied with.

12. **Sir Nigel Rodley** said that he was concerned about the reconstitution of the Southern African Development Community (SADC) Tribunal, which removed the right of individual petition. The Committee knew from experience that human rights were not well defended by inter-State complaints mechanisms. In that connection, he would also appreciate clarification of the delegation's reference to the exhaustion of domestic remedies.

13. The State party had said that a referendum might be held on the question of whether abortion should be made available on demand or whether the status quo should be retained. Human rights should not, in any case, be the subject of opinion polls, but the distance between those two choices was baffling: the Committee had said nothing about abortion on demand. The problem was that, although the grounds for abortion in the State party were consistent with the Committee's precepts, there were practical obstacles to securing an abortion under the existing law. He was surprised to learn that contraception was available in State health institutions because the Government's change of policy in that regard had not been publicized and civil society was unaware of it. As for harmful cultural practices, the Committee had been informed that the traditional leaders of all four main ethnic groups of the Zambezi Region had reported to the Women's Leadership Centre, which had been commissioned by the Ministry of Gender Equality and Child Welfare to provide training on that subject, that such practices continued to exist. The delegation's earlier response regarding such practices had focused on the avoidance of the risk of unwanted pregnancies, but he wondered what the relationship was between that and harmful cultural practices, unless it was that such practices could lead to unwanted pregnancies, in which case they were all the more reprehensible. He hoped that the *olufuko* festival, which was headed by senior government leaders and was said to promote education on avoiding pregnancy, was not the same as that featured in *Insight Magazine* in 2014, where girls were paraded half-naked before businessmen at an agricultural trade fair. He applauded the legal steps that had been taken to deal with cases of rape and to encourage witnesses to come forward. He would, however, be interested to hear about the implementation of strategies 16 and 17 of the National Plan of Action on Gender-based Violence 2012-2016, which provided for a number of measures dealing with the investigation and prosecution of rape cases.

14. He would welcome clarification as to whether the statistics provided in paragraph 86 of the replies to the list of issues (CCPR/C/NAM/Q/2/Add.1) included pretrial holding cells. He would like to know how many of such cells existed and whether they were overcrowded,

as reported by the Ombudsman in 2006 and 2008, who had attributed the problem in part to delays in the processing of cases and a lack of coordination between the police, prosecutors and magistrates. He would also be interested to know whether visiting justices had exercised their authority to inspect correctional centres and, if so, whether complainants were shielded from reprisals. The State party had not answered the Committee's questions about the mandate of the correctional inspector, how he or she was chosen and whether there were safeguards in place to ensure the inspector's independence.

15. Were there any plans to develop alternatives to custodial sentences and any programmes to educate judges and prosecutors about alternatives to detention? For example, did the Government plan to introduce community service orders as an alternative form of punishment for minor offences? He would be interested to know whether there was a system for monitoring community courts. Under the Community Courts Act, decisions issued by such courts could be appealed against in a magistrate's court, but he had some doubts as to the usefulness of that measure, since most people could not afford the legal assistance that they would need to lodge an appeal with a magistrate's court. According to some sources, given current budgetary restrictions, it was virtually impossible for anyone to obtain legal assistance, except in cases involving the most grievous crimes. He invited the delegation to refute that statement if it was incorrect.

16. He was interested in hearing the delegation's answers to the questions that had been posed concerning the Caprivi treason trial and the "common purpose" doctrine. It was his understanding that all those convicted in the Caprivi treason trial had been found guilty on the basis of that doctrine, which, according to Amnesty International, might have been used to convict prisoners of conscience, i.e. people who had been imprisoned for their non-violent political views.

17. **Ms. Pazartzis** asked whether the interception centres referred to paragraph 185 of the report (CCPR/C/NAM/2) were now operational. She noted that, despite the concerns raised during consultations on part 6 of the Communication Act, it had not been removed from the final bill. She wished to know what kind of information would be sought by such centres and what safeguards were in place to ensure that telecommunications would not be intercepted arbitrarily. Would the State party please explain how such measures would be in compliance with the Covenant and with the Committee's general comment No 16? What remedies would be available to persons claiming that their rights under article 17 of the Covenant had been violated in such a context? Had remedies under article 2 of the Constitution been sought and granted in relation to article 17 of the Covenant?

18. The Research, Science and Technology Act was very broad in scope and required all potential researchers to apply for a permit. Did the Government believe that the law was in compliance with article 19 of the Covenant? She would like to know what kind of information researchers were requested to submit prior to, during and after their research; whether there was a fee attached to the application for a research permit; and what the time limits for its submission were. It would also be useful to know what types of projects had been rejected, whether a researcher whose application had been rejected could apply again, and whether criminal sanctions were imposed in the event of violations. In view of the fact that the constitutionality of that law was being challenged in court, she wished to know whether the Government was considering amending or abolishing it. Did the Government plan to withdraw the ban on political events on campuses of all government institutions of higher learning? Could the delegation comment on reports of the intimidation of journalists by SWAPO members? What efforts had the State party undertaken to ensure freedom of expression and freedom of the press?

19. She took note of the fact that the Child Care and Protection Act had entered into force in 2015, but wished to know whether all its provisions had been finalized. Additional information on the human, technical and financial resources allocated for its

implementation would be welcome. She would like to know whether there had been any cases in which children under 10 years of age had been prosecuted and whether the constitutional protection against detention under the age of 16 was always respected. According to the State party's replies, two sentenced juvenile offenders were currently imprisoned. It would be useful to know how many court cases involving juveniles were pending.

20. **Mr. Seetulsingh** said that the State party had not fully responded to the questions concerning cases of rape, sexual abuse and prostitution of children contained in paragraph 24 of the list of issues (CCPR/C/NAM/Q/2), which had been posed so that the Committee would have an idea of the magnitude of the problem. Given that the Namibian police did not keep records on cases of child prostitution in the country, he wondered whether that problem was being completely ignored. According to some sources, Namibia could be a country of transit for child trafficking. Perhaps social workers employed by the Ministry of Gender Equality and Child Welfare who provided assistance to victims of trafficking could be asked how many of such cases they had come across. He was concerned by the fact that the Child Care and Protection Act did not specifically address the issue of child prostitution. Furthermore, the Prevention of Organized Crime Act made no distinction between trafficking for the purpose of commercial sexual exploitation and trafficking for non-sexual purposes. Did the Government plan to amend that law in order to specifically address the fairly new problem of child prostitution? He would welcome information on the trial concerning the first known sex trafficking case in Namibia, which was discussed in the 2015 *Trafficking in Persons Report* issued by the United States Department of State.

21. According to the State party's report, in order for a person to be allowed to vote, he or she must, inter alia, be identified by someone who was already registered. Was that requirement absolute or could exceptions be made in some cases?

22. It would be useful to know how many of the recommendations made by the former Special Rapporteur on the rights of indigenous peoples in the report on his visit to Namibia in September 2007 had been implemented. According to that report, indigenous peoples were not always consulted about activities conducted in areas where they lived. Cases in point included claims by the Nama peoples and by the Himba of the Kunene Region that they had not been informed about mining activities carried out on their traditional lands. There was also strong opposition on the part of the Himba, Ovazemba, Ovatue and Ovatjimba peoples to the proposed construction of the Baynes hydroelectric power project. He would like to know what measures had been taken with regard to those cases and whether consultations with indigenous peoples had been initiated. Was any compensation being provided to indigenous peoples in the form of resettlement assistance or improved living conditions? With reference to paragraph 131 of the replies to the list of issues (CCPR/C/NAM/Q/2/Add.1), he would like to know whether the traditional authorities of the San peoples had the power to administer their communal lands on their own. He wished to know how the interests of indigenous peoples were taken into account in the Government's efforts to improve education. Had the establishment of new schools helped to reduce early drop-out rates among San and Himba children? Had the complaints of the San and Himba peoples regarding improper treatment by health workers been dealt with? It would also be useful to know whether health workers spoke the local indigenous languages and whether there were indigenous language interpreters in courts, tribunals and prosecutors' offices.

23. The Committee had been informed that Namibian NGOs had not been given enough time to provide appropriate inputs for the State party's report. He would like to know whether the Inter-Ministerial Committee on Human Rights and Humanitarian Law would be prepared to give NGOs greater opportunities for contributing to such reports in future.

24. **Mr. de Frouville** said that he would like to draw the attention of the delegation to the Committee's general comment No. 31, in which it recalled that article 2 (3) of the Covenant required that, in addition to effective protection of Covenant rights, States parties must ensure that individuals also had accessible and effective remedies to vindicate those rights. According to paragraph 18 of that general comment, in cases of serious human rights violations such as torture, summary and arbitrary killing and enforced disappearance, the State party concerned must bring the perpetrators to justice. Therefore, in such cases, amnesties were prohibited by the Covenant. Furthermore, in its general comment No. 20, the Committee had stated that amnesties were incompatible with the duty of States to investigate such acts.

25. It was a cause of concern that the defendants in the Caprivi treason trial had remained in pretrial detention throughout the 15 years of the court proceedings and that 10 of the defendants had died in police custody in 2003 and 12 had died while in pretrial detention. At the end of the trial, Judge Hoff, had rightly decided to implement a 2001 Supreme Court ruling according to which evidence obtained under duress, including victims' statements obtained under torture, were deemed inadmissible. Although the judge's decision clearly indicated that some of the evidence presented during the trial had been obtained under torture or duress, no criminal proceedings seemed to have been instituted against the perpetrators. Did the State party intend to bring them to trial? Furthermore, in 2001, a suit had been lodged in connection with the enforced disappearance, within the context of the above-mentioned events, of 15 individuals belonging to the San ethnic group. He would like to know what legal action had been taken in that case.

26. **Mr. Bouzid** said that, aside from commenting on the content and the adoption of the bill on the crime of torture, the State party had failed to respond to the requests for information made in paragraphs 14 and 21 of the list of issues (CCPR/C/NAM/Q/2). In that connection, he wished to know how many adjudicated cases there had been in which minors had been married without the consent of their parents.

27. **Mr Shany** said that he would like to know whether there had been any progress towards the adoption of a law on freedom of information to replace, inter alia, the Protection of Information Act and thereby give full effect to article 21 (1) (a) of the Constitution. He invited the delegation to comment on reports that it was difficult to access public information, particularly on budgetary matters, and that, since 2006, the Government had held few consultations with civil society on a possible new law.

The meeting was suspended at 11.30 a.m. and resumed at 11.50 a.m.

28. **Mr. Kawana** (Namibia) said that his earlier remarks about territorial integrity had not been directed at the Committee, for which the Government had the utmost respect. He had merely wanted to draw attention to the fact that some Namibian NGOs had sent misinformation to the Committee in an effort to secure additional funding. The Government had a constructive relationship with other national NGOs, which were invited to the State House of the Republic of Namibia every year to hold talks with the President.

29. **Sir Nigel Rodley** said that Committee members wanted to hear fact-based answers to the questions that they had asked, rather than speculation about alternative sources of information.

30. **Mr. Kawana** (Namibia), in response to requests for statistics, said that Namibia was a developing country and, as such, had a limited capacity for compiling and disaggregating data. All available information would be submitted to the Committee in writing within 48 hours. The Government had set up the Namibia Statistics Agency to gather official data and was rolling out a system to facilitate access to information on the courts and the cases that they handled.

31. Amendments to the Combating of Domestic Violence Act would be proposed during the course of 2016, and the possibility of extending the authority to issue restraining orders to bodies other than magistrates' courts would be considered as work on those amendments proceeded. The Government had purchased seven women's shelters, some of which were in poor condition and would need to be upgraded. Staff for those shelters would soon be recruited. A bill on persons with disabilities was being drafted. The Committee's recommendations in that regard had been noted and, where possible, would be accommodated. Although same-sex marriages were not legally recognized, Namibia had a tolerant society and measures were being taken to educate the public. The Government was wary of introducing legislative changes too swiftly, since doing so could give rise to organized opposition from religious leaders. As part of the universal periodic review process, Namibia had received recommendations related to the laws on sodomy, racial discrimination and the distribution of condoms in prison, all of which would be discussed by the Cabinet.

32. Protection against child and forced labour was provided for in the Constitution and in the Labour Act of 2007. The Ministry of Labour and Social Welfare had never authorized any derogation from the relevant provisions of the Labour Act, and an entrenched clause had been adopted to prevent the protection afforded by the Constitution from being removed or diminished. Private farm owners who denied labour inspectors access to their property would be committing a criminal offence. Despite having limited resources, the Government was trying to ensure that there was an adequate number of inspectors. A minimum wage had been introduced in the farm sector, and the Government met regularly with farmers' associations and farmworkers' unions to hear their concerns.

33. The anti-trafficking bill mentioned in paragraph 76 of the replies to the list of issues (CCPR/C/NAM/Q/2/Add.1) would be one of the first to be considered in Parliament after the adoption of the national budget later in 2016.

34. Persons who were arrested had the right to be brought before a court of law within 48 hours or as soon as possible thereafter. Nevertheless, the size of the country and the shortage of resources sometimes made it difficult to meet the 48-hour target. The Government was working to reduce the domestic courts' case backlog, including through the establishment of mobile courts that operated even at the weekend. Delays had been caused in part by the need to conduct often lengthy psychiatric assessments to determine whether defendants were fit to stand trial. Pursuant to the Office of the Judiciary Act, which had entered into force on 31 December 2015, the judiciary was fully independent, including with regard to budgetary issues.

35. In reply to a question related to the Immigration Control Act and to the Refugees (Recognition and Control) Act, he could confirm that no distinction was made between other asylum seekers and asylum seekers whose applications were based on persecution relating to their sexual orientation. As for the earlier question regarding sterilization, that procedure could be performed only at the request of patients, who were required to sign a consent form.

36. **Ms. Kandetu** (Namibia) said that the Government was unaware of the presence of any unaccompanied minors among the immigrant population in Namibia. Children whose parents or guardians had been granted asylum were entitled to remain in the country. The case of Tao Hua Zhu, a Chinese national who had become an illegal immigrant following the rejection of his application for renewal of an employment permit, had been dealt with in accordance with the Immigration Control Act.

37. **Mr. Kawana** (Namibia) said that the Ministry of Home Affairs and Immigration had been directed by the Cabinet to grant permanent residence to Angolan former refugees at the Osire refugee settlement. Some of those refugees had also been granted citizenship.

There were no plans to close the settlement because asylum seekers continued to come to Namibia.

38. While it was indeed the case that the right of individuals to have direct access to the Southern African Development Community (SADC) Tribunal had been removed, the matter was a multilateral issue involving all the member States of the Community and thus could not be settled by Namibia alone. Namibia had, however, ratified the new protocol for the Tribunal and had submitted the name of its judicial appointee to the Community's secretariat.

39. The Government would give due consideration to the Committee's recommendations concerning the removal of legal obstacles to the effective implementation of the law on abortion and would seek ways to act upon them, as appropriate.

40. The authorities had taken steps to raise awareness among traditional leaders of the need to change certain cultural practices that were deemed to be harmful. For example, annual meetings were held with the Council of Traditional Leaders as part of the Government's efforts to engage with communities and bring about positive change. Regarding the use of images of semi-naked girls in campaigns to prevent teenage pregnancy, such efforts had proved to be highly successful and had helped to ensure that more adolescent girls remained in education and completed their studies.

41. As to the monitoring of prison conditions, the Ombudsman carried out periodic visits to detention facilities and submitted reports to Parliament. A number of new facilities were being built in order to reduce prison overcrowding, and the establishment of a remand prison for pretrial detainees was also planned.

42. The Government would give due consideration to ratifying the Optional Protocol. Training was provided to officials of traditional and community courts to ensure compliance with human rights standards and national legislation. Legal aid, which was funded from the budget of the Ministry of Justice, was readily available in Namibia. With regard to the Caprivi treason trial, a number of individuals had lodged appeals against their convictions; those appeals were still being considered by the corresponding court. The defendants in the case had been provided with legal aid to allow them to appoint counsel of their choosing. It was important to bear in mind that that case involved an armed attack on the territorial integrity of Namibia. He wished to make clear that the Government absolutely did not condone torture or impunity for such acts; in fact, it was introducing a bill that was fully in line with the Convention against Torture.

43. Under the Communications Act, information could not be intercepted without judicial authorization. In accordance with article 18 of the Constitution, any individual who was aggrieved by the act of a public official had the right to seek redress. There was no censorship of the media in Namibia. He was not aware of any journalist having been intimidated or detained. Since independence, the only conviction handed down against a journalist had been for contempt of court.

44. Under recently introduced legislation, children under the age of 10 years could not be held in detention. The Government had taken action, including criminal prosecutions, to deal with child prostitution, which was prevalent in border areas. It would give consideration to amending the Prevention of Organized Crime Act in order to differentiate between trafficking for commercial sexual exploitation and trafficking for non-sexual purposes.

45. With regard to the exercise of the right to vote, a person was required to identify himself or herself before voting. Persons who were not in possession of an identity document had to be identified by two people who were already registered voters.

46. With respect to the harvesting of natural resources on land occupied by indigenous peoples and others, under the Minerals Act, persons whose interests were adversely affected by the granting of mining licences were entitled to compensation.

47. Interpretation was provided in the courts in order to ensure that defendants were tried in a language that they could understand. The Child Care and Protection Act, which was due to come into force soon, addressed issues of underage marriage. He was not aware of any cases of forced marriage in Namibia. He had taken note of the claims that NGOs had had insufficient time to contribute to the periodic report and would engage with them on that issue in due course.

48. **Ms. Cleveland** said that she wished to know whether religious marriages were considered to be different from customary marriages and whether they also fell within the scope of the bill on the recognition of customary marriages. Were there cases in which victims of forced sterilization had been provided with compensation? The Committee would appreciate information on the location of the seven shelters that were being provided for survivors of domestic violence. Had the State party considered doing away with the requirement for refugees in the Osire camp, including those who had been granted study and employment permits, to obtain permission to leave the settlement?

49. **Mr. Kawana** (Namibia) said that customary marriages and religious marriages differed in a number of respects, including the applicable grounds for divorce and arrangements for the distribution of property. New legislation on customary marriages was being considered as part of the Family Law Project undertaken by the Law Reform and Development Commission with a view to providing enhanced protection for women and children. Faith-based organizations were authorized to perform religious marriages in accordance with their beliefs. The delegation would provide details in writing on the location of the shelters for survivors of domestic violence. Regulations in force at the Osire camp were designed to ensure the protection and safety of the refugees residing there.

50. In conclusion, he wished to draw the Committee's attention to the fact that, over the past 25 years, Namibia had made great strides in economic development, legislative reform and increased access to social services. However, despite that progress, many challenges remained. The Government was therefore working hard to develop new laws, policies and programmes with a view to fully realizing the rights recognized in the Covenant and other human rights treaties. It would continue to work together with all stakeholders at the national and international levels in the pursuit of those objectives.

51. **The Chair** said that, during the dialogue with the State party, it had been very useful for the Committee to hear about laws that had been passed and policies that were being pursued. However, while the State party had adopted a number of important pieces of legislation, much remained to be done to give practical effect to the rights recognized under the Covenant. The questions raised by experts in the course of the dialogue should not have come as a surprise to the delegation because the information on which they had been based was publicly available — much of it in the concluding observations of other United Nations treaty bodies following their dialogues with the State party. Unfortunately, the delegation's rather general replies to those questions would be of limited use to the Committee in the formulation of its concluding observations. Consequently, he hoped that the delegation would be able provide more detailed responses in writing within 48 hours of the closure of proceedings.

The meeting rose at 1.05 p.m.